

# *The* **NORTH CAROLINA REGISTER**

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**ISSUE DATE: June 1, 1992**

**Volume 7 • Issue 5 • Pages 401-490**



# **INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE**

## **NORTH CAROLINA REGISTER**

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

## **ADOPTION AMENDMENT, AND REPEAL OF RULES**

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the *North Carolina Administrative Code* (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

## **TEMPORARY RULES**

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions of G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review. The agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the next business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule, not to exceed 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

## **NORTH CAROLINA ADMINISTRATIVE CODE**

The *North Carolina Administrative Code* (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% of is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down into chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions and supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

## **CITATION TO THE NORTH CAROLINA REGISTER**

The *North Carolina Register* is cited by volume, issue, number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

# NORTH CAROLINA REGISTER



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# NORTH CAROLINA REGISTER

## *Publication Schedule* (May 1992 - December 1993)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	* Earliest Effective Date
*****						
05/01/92	04/10/92	04/17/92	05/16/92	05/31/92	06/20/92	08/03/92
05/15/92	04/24/92	05/01/92	05/30/92	06/14/92	06/20/92	08/03/92
06/01/92	05/11/92	05/18/92	06/16/92	07/01/92	07/20/92	09/01/92
06/15/92	05/22/92	06/01/92	06/30/92	07/15/92	07/20/92	09/01/92
07/01/92	06/10/92	06/17/92	07/16/92	07/31/92	08/20/92	10/01/92
07/15/92	06/24/92	07/01/92	07/30/92	08/14/92	08/20/92	10/01/92
08/03/92	07/13/92	07/20/92	08/18/92	09/02/92	09/20/92	11/02/92
08/14/92	07/24/92	07/31/92	08/29/92	09/13/92	09/20/92	11/02/92
09/01/92	08/11/92	08/18/92	09/16/92	10/01/92	10/20/92	12/01/92
09/15/92	08/25/92	09/01/92	09/30/92	10/15/92	10/20/92	12/01/92
10/01/92	09/10/92	09/17/92	10/16/92	10/31/92	11/20/92	01/04/93
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10/15/93	09/24/93	10/01/93	10/30/93	11/14/93	11/20/93	01/04/94
11/01/93	10/11/93	10/18/93	11/16/93	12/01/93	12/20/93	02/01/94
11/15/93	10/22/93	10/29/93	11/30/93	12/15/93	12/20/93	02/01/94
12/01/93	11/05/93	11/15/93	12/16/93	12/31/93	01/20/94	03/01/94
12/15/93	11/24/93	12/01/93	12/30/93	01/14/94	01/20/94	03/01/94

\* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.

**EXECUTIVE ORDER NUMBER 161  
EXTENSION OF EXECUTIVE ORDERS 12, 13,  
27, 29, 39, 55, 109, AND 110**

WHEREAS, Executive Orders 12, 13, 27, 29, 39, 55, 109 and 110 established certain boards and commissions necessary to promote the general welfare of the citizens of North Carolina;

WHEREAS, good cause has been demonstrated for the extension of these executive orders;

THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of North Carolina, **IT IS ORDERED:**

**Section 1. EXTENSION OF EXECUTIVE ORDERS**

The Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, as established by Executive Order Number 39, and reissued by Executive Order Number 93, is hereby extended, retroactive June 20, 1991, without amendment for a period of two years.

The North Carolina Fund for Children And Families Commission, as established by Executive Order Number 27, amended by Executive Order Number 47, and reissued by Executive Order Number 93, is hereby extended, retroactive June 20, 1991, without amendment for a period of two years.

The North Carolina State Health Coordinating Council, as established by Executive Order Number 13, amended and reissued by Executive Order Number 51, and amended and reissued by Executive Order Number 93, is hereby extended, retroactive June 20, 1991, without amendment for a period of two years.

The Governor's Task Force on Racial, Religious, and Ethnic Violence and Intimidation, as established by Executive Order Number 29, amended by Executive Order Number 44, and amended and reissued by Executive Order Number 93, is hereby extended, retroactive June 20, 1991, without amendment for a period of two years.

The Martin Luther King Holiday Commission, as established by Executive Order Number 55 and amended and extended by Executive Order Number 101, is hereby extended, retroactive September 30, 1991, without amendment for a period of two years.

The Governor's Highway Safety Commission, as established by Executive Order Number 12, extended by Executive Order Number 51, and reissued by Executive Order Number 93, is hereby extended, retroactive June 20, 1991, without amendment for a period of two years.

The North Carolina Sports Development Commission, as established by Executive Order Number 109, is hereby extended, retroactive March 29, 1992, without amendment for a period of two years.

The Governor's Advisory Council on International Trade, as established by Executive Order Number 110, is hereby extended, retroactive March 29, 1992, without amendment for a period of one year.

**Section 2. RESCISSION OF EXECUTIVE ORDER**

The Advisory Committee on Travel and Tourism, as established by Executive Order Number 8, extended by Executive Order Number 51, and restructured by Executive Order Number 112, is hereby rescinded.

This Executive Order shall become effective immediately.

Done in Raleigh this 21st day of April, 1992.

**EXECUTIVE ORDER NUMBER 162  
COUNCIL ON HEALTH POLICY  
INFORMATION**

North Carolina invests significant resources in the creation and maintenance of major health data systems. As a result, we have fundamentally sound health data sets of national renown. Nevertheless, organizational and other barriers prohibit health policy makers from using these data sets and systems to the fullest extent possible in formulating health policy.

Health policy in State Government is decentralized. Several public health and environmental programs are located in the Department of Environment, Health, and Natural Resources. Other health related programs such as Medicaid, Mental Health, Developmental Disabilities, Substance Abuse, and the Office of Rural Health and Resource Development are located in the Department of Human Resources. Still other departments such as the Department of Insurance have programs addressing health concerns.

These organizational barriers contribute significantly to lost opportunities for creative links between important health data sets.

Moreover, while all of the State's health-related programs and departments maintain data collection systems, data gaps still remain. Problems stemming from the absence of accessible, reliable, timely health data have hindered the use of data in the formation of health policy.

These generic data problems pose formidable obstacles to obtaining an adequate understanding of the health needs of the residents of North Carolina. Moreover, any deficiencies in State health statistics affect a broad range of organizations that could make use of timely, reliable and objective information for health policy and research. Hence, North Carolina must strive to improve the availability and accessibility of salient health statistics. Furthermore, every opportunity must be taken to foster the general understanding and expanded use of health statistics by policy-makers and other responsible for the delivery of health care services in this State. THEREFORE:

WHEREAS, the value of reliable, timely, and comprehensive health information is crucial for policy-making and program management, and;

WHEREAS, every effort must be made to remove obstacles which hinder the use of data by health policy makers, and;

WHEREAS, interagency communication and cooperation is necessary for agencies responsible for the creation of effective health policy since no single umbrella agency has authority for all health programs, and;

WHEREAS, North Carolina has been awarded funds from the Robert Wood Johnson Foundation to develop a comprehensive State health data plan to enhance the use of health data for policy decision-making and program management;

THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

#### Section 1. ESTABLISHMENT

The Council on Health Policy Information ("the Council") is hereby established. The Council shall consist of not less than 21 members appointed by the Governor.

#### Section 2. MEMBERS OF THE COUNCIL

The membership of the Council shall include, but not be limited to, the following persons or their designees:

- (1) State Health Director, who will serve as Chairman;
- (2) Director of the Division of Medical Assistance, Department of Human Resources;
- (3) Director of the Office of State Planning;
- (4) Commissioner of Insurance;
- (5) State Budget Officer;
- (6) Director of Fiscal Research for the General Assembly;
- (7) Director of the Office of Rural Health and Resources Development, Department of Human Resources;
- (8) Director of the Division of Aging, Department of Human Resources;
- (9) Chairperson of the Commission for Health Services;
- (10) Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse, Department of Human Resources;
- (11) Chairperson of the State Health Coordinating Council;
- (12) President of the Association of Local Health Directors;
- (13) President of the North Carolina Hospital Association;
- (14) President of the North Carolina Medical Society;
- (15) Director of the Duke University Institute for Health Policy;
- (16) President of the North Carolina Minority Health Center; and
- (17) President of Citizens for Business and Industry.

The Membership of the Council shall also include one member of the North Carolina House, one member of the North Carolina Senate, and two representatives of private insurance companies doing business within North Carolina.

The following persons or their designees shall serve as ex-officio members of the Council:

- (1) Director of the State Center for Health and Environmental Statistics;
- (2) Executive Director of the Medical Database Commission; and
- (3) Director of the Health Policy Unit of the Cecil G. Sheps Center for Health Services Research, University of North Carolina School of Public Health.

All members shall serve at the pleasure of the Governor. All vacancies shall be filled by the Governor.

**Section 3. FUNCTIONS**

A. The Council shall meet monthly, or by call of the Chairman.

B. The Council shall submit to the Governor a State Health Data Plan by May 1, 1993, that outlines:

- (1) How North Carolina can further enhance data-based health policy-making through improved health statistics and information systems; and
- (2) How best to institutionalize a process for collaborative health policy formulation and implementation.

C. To execute its responsibilities the Council shall have the power to:

- (1) collect existing program data and request additional data from public and private sources as needed,
- (2) hold public hearings; and
- (3) set up ad hoc committees as necessary and appropriate to fulfill its responsibilities.

**Section 4. ADMINISTRATION**

A. Financial support for the Council shall be provided through a grant from the Robert Wood Johnson Foundation to be administered by the Department of Environment, Health, and Natural Resources.

B. Members of the Council shall be reimbursed for necessary travel and subsistence expenses as authorized under General Statute 138-5 and 138-6. Funds for such expenses shall be made available from funds provided by the grant from the Robert Wood Johnson Foundation.

C. The continuation of this Executive Order, or any renewal or extension thereof, is dependent upon and subject to the allocation of appropriation of funds for the purposes set forth herein (N.C.G.S. 143-34.2).

D. Each cabinet department involved shall make every reasonable effort to cooperate with the Council to implement the provisions of this order.

**Section 5. TERM**

This Executive Order shall become effective immediately and shall expire, subject to the condition of Section 4C, in accordance with North Carolina law two years from the date hereof. It is subject to reissuance at the discretion of the Governor.

Done in Raleigh, North Carolina, this 1st day of May, 1992.

**EXECUTIVE ORDER NUMBER 163  
AMENDMENT TO EXECUTIVE ORDER  
NUMBER 151**

By the authority vested in me as Governor by the Constitution and laws of North Carolina, **IT IS ORDERED:**

Executive Order Number 151 is hereby amended to add the following members to the Governor's Advisory Commission on Military Affairs:

**Section 1. ESTABLISHMENT**

The Governor's Advisory Commission on Military Affairs is hereby re-established. It shall be comprised of thirty-five (35) members. Nineteen (19) members are to be appointed by the Governor and serve for terms of two (2) years at the pleasure of the Governor. In addition to the nineteen (19) appointed members the following sixteen (16) will be permanent members:

- (1) Lieutenant Governor of North Carolina;
- (2) Chairpersons of the Military Affairs Committees of the North Carolina House of Representatives and the North Carolina Senate;
- (3) Secretaries of the Departments of Administration, Transportation, Environment, Health, and Natural Resources, Crime Control and Public Safety, and Economic and Community Development;
- (4) Base Commanders of Fort Bragg, Camp Lejeune, Cherry Point and the Elizabeth City Coast Guard Air Station;
- (5) Wing Commanders of the 4th Tactical Fighter Wing and the 317th Tactical Air-lift Wing;
- (6) Executive Director of the North Carolina Ports Authority; and
- (7) Adjutant General of the North Carolina National Guard.

The Governor shall designate one of the members as Chairperson.

This Executive Order shall become effective immediately.

Done in Raleigh, this the 30th day of April, 1992.

**EXECUTIVE ORDER NUMBER 164  
EXTENDING THE PROVISIONS OF  
EXECUTIVE ORDER NUMBER 114,  
AS SUPPLEMENTED BY EXECUTIVE  
ORDER NUMBER 130, FOR FISCAL  
YEAR 1991-92**

Reference is made to Executive Order Number 114 dated May 8, 1990, and Executive Order Number 130 dated January 9, 1991.

It has been determined from the continuing survey of the collection of revenues for the 1991-92 fiscal year made by the Office of State Budget and Management, that unless economies are effected in State expenditures as allowed in Executive Order Number 114 and Executive Order Number 130, the State will incur a deficit in the administration of its General Fund budget.

THEREFORE, pursuant to authority granted to the Governor by Article III, Sec. 5(3) of the Constitution and to fulfill the duties required of the Governor thereunder:

1. It is found as a fact that based on General Fund Revenue Collections through March, 1992, and projections for the collection of these revenues through June, 1992, actual receipts of General Fund revenues for the 1991-92 fiscal year will not meet those anticipated and budgeted by the 1991 General Assembly.

2. From this fact it is determined and concluded that unless economies in State expenditures are made as allowed in Executive Order Number 114 and Executive Order Number 130, the State's General Fund expenditures will exceed General Fund receipts for the 1991-92 fiscal year.

3. To insure that a deficit is not incurred in the administration of the General Fund budget for the 1991-92 fiscal year, the economies in State expenditures allowed by Executive Order Number 114 and Executive Order Number 130 are found to be necessary.

THEREFORE, IT IS ORDERED:

Section 1. Effective May 1, 1992, and until further notice, the economies in State expenditures allowed by Executive Order Number 114 and Executive Order Number 130 shall be put into effect at such times and in such amount and as

directed by the Office of Budget and Management.

Section 2. This Order shall become effective May 1, 1992, and shall remain in effect until rescinded by further Executive Order.

Done in the Capital City of Raleigh, North Carolina, this 1st day of May, 1992.

**EXECUTIVE ORDER NUMBER 165  
EXTENSION AND RESTRUCTURING OF  
EXECUTIVE ORDER NUMBER 43**

Whereas, there is a need to restructure the North Carolina Emergency Response Commission in order to foster safety for the citizens of North Carolina;

Therefore, pursuant to the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Executive Order Number 43, as amended by Executive Order Numbers 48 and 50, and reissued pursuant to Executive Order Number 93, is hereby extended, retroactive June 20, 1991, for a period of two years, and is hereby amended as follows:

Section 1. ESTABLISHMENT

There is hereby established the North Carolina Emergency Response Commission (the "Commission"). The Commission shall consist of not less than seventeen (17) members and shall be composed of at least the following persons:

Director, Division of Emergency Management, Department of Crime Control and Public Safety, who shall serve as Chairperson;

State Highway Patrol Hazardous Materials Coordinator, Department of Crime Control and Public Safety;

Safety Director, Department of Agriculture;

Supervisor, Facilities Assessment Unit, Division of Environmental Management, Department of Environment, Health, and Natural Resources;

Director, Solid Waste Management Division, Department of Environment, Health, and Natural Resources;

## EXECUTIVE ORDERS

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Director, Radiation Protection Division, Department of Environment, Health, and Natural Resources;

Director, Office of Waste Reduction (Pollution Prevention Program), Department of Environment, Health, and Natural Resources;

Director, Emergency Planning, Division of Highways, Department of Transportation;

Chief, Transportation Inspection, Division of Motor Vehicles (Enforcement Section), Department of Transportation;

Manager, Training/Standards Program, Fire and Rescue Services Division, Department of Insurance;

Chief, Emergency Medical Services, Division of Facility Services, Department of Human Resources; and

Six at-large members from local government and private industry with technical expertise in the emergency response field to be appointed by the Governor and serve for terms of two (2) years at the pleasure of the Governor.

This Executive Order shall become effective immediately.

Done in Raleigh, this the 23rd day of April, 1992.

*[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]*

U.S. Department of Justice  
Civil Rights Division

JRD:LLT:NT:gmh  
DJ 166-012-3  
92-0845

Voting Section  
P.O. Box 66128  
Washington, D.C. 20035-6128

April 20, 1992

Richard J. Rose, Esq.  
Poyner & Spruill  
P. O. Box 353  
Rocky Mount, North Carolina 27802-0353

Dear Mr. Rose:

This refers to the annexation [Ordinance No. 191 (1991)] and the designation of the annexed area to an election district for the City of Rocky Mount in Edgecombe and Nash Counties, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on February 24, 1992.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne  
Assistant Attorney General  
Civil Rights Division

By:

Steven H. Rosenbaum  
Chief, Voting Section

*IN ADDITION*

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U.S. Department of Justice  
Civil Rights Division

JRD:MAP:RA:lrj  
DJ 166-012-3  
92-1264

Voting Section  
P.O. Box 66128  
Washington, D.C. 20035-6128

May 7, 1992

DeWitt F. McCarley, Esq.  
City Attorney  
P. O. Box 7207  
Greenville, North Carolina 27835-7207

Dear Mr. McCarley:

This refers to seven annexation [Ordinance Nos. 2343, 2354, 2377, 2378, 2379, 2391 (1991) and 2407 (1992)] and the designation of the annexed areas to single-member districts for the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on March 16, 1992.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne  
Assistant Attorney General  
Civil Rights Division

By:

Steven H. Rosenbaum  
Chief, Voting Section

*This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.*

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## North Carolina Wildlife Resources Commission

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The North Carolina Wildlife Resources Commission will accept comments until July 1, 1992, on 15A NCAC 10I .0001 and 15A NCAC 10I .0006 which were published in Volume 7, Issue 1, pages 48-52 of the North Carolina Register on April 1, 1992.

**TITLE 10 - DEPARTMENT OF HUMAN  
RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services intends to amend rule(s) cited as 10 NCAC 14C .1010, .1014, .1115; and repeal rule(s) cited as 10 NCAC 14C .1007, .1009.*

*The proposed effective date of this action is October 1, 1992.*

*The public hearing will be conducted at 9:00 a.m. on June 30, 1992 at the Albemarle Building, 325 N. Salisbury Street, 11th Floor Conference Room, Raleigh, N.C. 27603.*

**Reasons for Proposed Actions:**

*\* The rules listed below are accounting rules and set forth requirements for area programs in providing mental health, developmental disabilities and substance abuse services.*

**10 NCAC 14C .1007 - Contracts with Consultants, .1009 - Contracts for Professional Services - To incorporate the content of these Rules into 10 NCAC 14C .1010 to have all contract-related rules in one section.**

**10 NCAC 14C .1010 - Contract Requirements for Area Programs - To pull together all content relative to contracts into one rule. Contract rules were previously located in several sections. The proposed changes will combine all contract regulations into one section and update the rules to be consistent with Division policies and structure.**

**10 NCAC 14C .1014 - Expenditure of Categorical Funds - The fund balance provisions are revised to reflect consistency with other Division policies. The fund balance rule is changed to permit area programs to establish the fund balance provisions for their contract providers. This change is consistent with Division policy to allow area programs to establish, within reason, policies concerning contract providers.**

**10 NCAC 14C .1115 - Funding Group Homes for Mentally Retarded Adults - For residents who earn a relatively high level of monthly income, this change would allow the resident and the home to share in the costs of higher rent required by HUD, thus allowing them to remain in the home. Recent advances in vocational programming (supported**

*employment) have resulted in many DD residents of HUD-financed group homes earning substantially greater amounts of money and exceeding the HUD income criteria. HUD then requires a rent supplement. Homes typically have not had resources to pay the full amount of this supplement and were forced to restrict admissions or limit the residents' vocational option. This Rule would result in a sharing of fiscal responsibility for the rent supplement between the resident and the home, and thus make continuity of residential placement more feasible for both.*

**Comment Procedures:** *Any interested person may present his comments by oral presentation or by submitting a written statement to Charlotte Tucker, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury St., Raleigh, N.C. 27603. Written comments must state the rules to which the comments are addressed, and be received in this office by 6/30/92. Persons wishing to make oral presentations should contact Charlotte Tucker at the above address by June 29, 1992. Time limits for oral remarks may be imposed by the Division Director. Fiscal information on these Rules is available upon request.*

**CHAPTER 14 - MENTAL HEALTH: GENERAL**

**SUBCHAPTER 14C - GENERAL RULES**

**SECTION .1000 - ACCOUNTING STANDARDS  
FOR ALL RECIPIENTS OF FUNDS  
ADMINISTERED BY THE DIVISION**

**.1007 CONTRACTS WITH CONSULTANTS**

*(a) All proposed contracts with consultants shall be reviewed by the appropriate Regional Director.*

*(b) Contracts to provide honoraria for guest speakers shall be considered contracts with consultants.*

*Statutory Authority G.S. 122C-147.*

**.1009 CONTRACTS FOR PROFESSIONAL  
SERVICES**

*(a) All contracts between an area program and any party for the performance of professional services of that party shall be on a standard form provided by the area program. Such forms shall require such information as the names of the contracting parties, duties to be performed by the parties, dates of employment, rates of pay, and transportation, meals and lodging expenses to be provided to the professional.*

*(b) All requests for reimbursement for professional services rendered to an area program shall*

be made upon a standard form provided by the area program. Such forms shall require the names of both contracting parties, the address and social security number of the professional person, the dates of service, the rate of pay and total amount owing, and the signature of the professional person.

Statutory Authority G.S. 143B-10.

#### 1010 CONTRACT REQUIREMENTS FOR AREA PROGRAMS

(a) This Rule applies to all contracts between an area program (hereafter referred to as "contractor") and contract providers (hereafter referred to as "contractees"). For purposes of this Rule, contractees include:

- (1) an individual with whom a contract is made for professional services, including consultants and guest speakers; and
- (2) an agency with whom a contract is made for the provision of services to one or more clients.

(b) The basis for the relationship between the area program and the consultant or profit or non-profit contract agency shall be established during the development of the is the written contract. All contracts mutual understandings and expectations shall conform with the applicable requirements of the accounting rules codified in Sections 1000 and 1100 of this Subchapter and 10 NCAC 11D .0006. be clearly stated in the contract. All contracts entered into Contracts between an area program and a private non-profit contractor consultant or profit or non-profit contract agency for provision of services to clients shall utilize either the unit cost basis (set cost per unit of service) or the total cost basis with line item expenditure budget control. All written contracts between an area program and any other contracting party not otherwise described in this Section shall contain the following information: contain, at a minimum, the information as indicated in this Rule. The area program may require additional information it deems necessary. Minimum requirements for all contracts shall be:

- (1) names of the contracting parties;
- (2) beginning and ending dates of the contract period; the area program shall renegotiate and renew on review, at least an annual basis annually, all contracts with contracting parties which are to be continued; continue;
- (3) detailed description of the work and services contracted for to be provided and the expectations of the parties;

- (4) the amount of any payments required under the contract; amount and method of payment;
- (5) the method of payment; address and social security number or IRS identification number of "contractee";
- (6) requirements of financial and program reports from the party contracting with the area program which should be submitted no less than quarterly documenting completion of services rendered and degree to which the objectives specified have been met; the following statement when a contract period is greater than 30 days: "This contract may be terminated at any time upon mutual consent of both parties or 30 days after one of the contracting parties gives notice of termination;"
- (7) a line item budget for a total cost basis contract; a statement which indicates that the contract may be terminated immediately with cause upon written notice to the other party; the cause shall be documented in writing to the other party detailing the grounds for termination; and if applicable, the contract may contain a provision indicating method of payment of liquidation damages upon such termination;
- (8) a statement that client records of the contract agency shall be accessible for review for the purpose of monitoring services rendered, financial audits by third party payors, research and evaluation; a clause which indicates that the "contractor" (area) is held harmless from acts committed by the contractor;
- (9) the following statement where indicated: "This contract may be terminated at any time upon mutual consent of both parties or 30 days after one of the contracting parties gives notice of termination." and a provision indicating method of payment and liquidated damages, if any, upon such termination; signature of each party to the contract; and
- (10) a statement which indicates that the contract may be terminated at any time for cause without a time period notice to the other party; the cause shall be documented in writing to the other party detailing the grounds for termination; and the contract shall contain a provision indicating method of payment and liquidated damages, if any, upon such termination; a pre-audit statement in accordance with G.S. 159-28.

- (11) the signatures of each party to the contract;
  - (12) a requirement that the party contracting with the area program shall make available to the area program its accounting records for the purpose of audit by state authorities and that the party will, when appropriate, have an annual audit by an independent certified public accountant; it is appropriate to require an audit any time funds pass from the area program to a non-profit agency for services not reimbursed on a division-approved per unit cost basis or as otherwise specified in the accounting rules or in requirements placed on the Division by outside sources. The Division may waive the requirement of an audit required by the Division when it is determined that an audit would not be beneficial. The request for waiver shall be in writing to the controller of the Division. Waivers shall not be granted after the due date of the audit;
  - (13) a statement, where indicated, that title to equipment purchased under the contract remains with the party contracting with the area program as long as that party continues to provide the services which were supported by the contract; if such services are discontinued, equipment purchased under the contract may be reallocated by the area program or the Division;
  - (14) the following statement where indicated: "The party contracting with the area program shall provide to the area program data about individual clients for research and study. Such data, excluding client names, may be further transmitted to the Division for research and study.";
  - (15) a statement specifying the procedure for handling budget revisions if revisions are necessary;
  - (16) a statement specifying the procedure for handling any disagreement between the area program and the contract agency;
  - (17) a clause which indicates that the grantor is held harmless from acts committed by the contractor;
  - (18) a pre-audit statement in accordance with General Statute 159-28;
- (c) Additional requirements when contracting with a profit or non-profit agency shall be as follows:
- (1) either a Division approved unit cost basis or the total cost basis (line item budget) shall be utilized; a statement specifying the procedure for budget revisions and provisions for fund balance; and a statement which includes:
    - (A) the procedure for resolving disagreement between the contracting parties;
    - (B) for total cost contracts, title to assets purchased under the contract in whole or in part with the area program so long as that party continues to provide the services which were supported by the contract; if such services are discontinued, disposition of the assets shall occur as approved by the Division;
    - (C) client records of the contract agency which shall be accessible for review for the purpose of monitoring services rendered, financial audits of third party payors, research and evaluation;
    - (D) data about individual clients for research and study which the "contractee" shall provide to the area program upon request;
    - (E) the area program requirement to provide to the contract agency all pertinent rules, regulations, standards and other information distributed by the Division necessary for the performance of the contractor under the terms of the contract;
    - (F) the area program requirement to monitor the contract to assure compliance with rules of the Commission, the Secretary and G.S. 122C-142;
    - (G) (19) in contracts negotiated by the area program with a non-profit corporation, a statement that a copy of the independent audit referenced in (12) Subparagraph (c)(4) of this Rule shall be forwarded to the Office of the State Auditor at 300 North Salisbury Street, Raleigh, North Carolina 27611, 27603-5903, with the exception of the following:
      - (i) ~~(a)~~ sheltered workshops;
      - (ii) ~~(b)~~ adult developmental activity programs;
      - (iii) ~~(c)~~ private residential facilities for the mentally retarded and developmentally disabled;
      - (iv) ~~(d)~~ developmental day care centers;
      - (v) ~~(e)~~ hospitals;
      - (vi) ~~(f)~~ volunteer fire departments;
      - (vii) ~~(g)~~ rescue squads;
      - (viii) ~~(h)~~ ambulance squads; and
      - (ix) ~~(i)~~ junior colleges, colleges or universities accredited by the southern regional accrediting association;
  - (2) provisions which outline the responsibility of the "contractee" for the adoption, assessment, collection and disposition of fees in accordance with G.S. 122C-146;

- (3) a requirement that the "contractee" with the area program shall make available to the area program its accounting records for the purpose of audit by State authorities and that the party will, when required by general statute, have an annual audit by an independent certified public accountant.
- (20) a statement specifying the procedure to be employed by the area program to assure that the contract agency receives all pertinent rules, regulations, standards, and other information distributed by the Division necessary for the operation of the contract agency within the requirements established by the Commission and the Division including drafts of such information distributed for review;
- (21) a statement specifying that under G.S. 122C-142 the area program will monitor the contract to assure compliance with rules of the Commission and the Secretary and applicable General Statutes; and
- (22) provisions outlining the responsibility of the area authority and contract provider for the adoption, assessment, collection and disposition of fees in accordance with G.S. 122C-146.

*Statutory Authority G.S. 122C-112(a)(6); 122C-131; 122C-141; 122C-142; 122C-146; 143B-10; 159-40.*

#### 1014 EXPENDITURE OF CATEGORICAL FUNDS

(a) The Division shall allow area programs to budget division categorical funds within cost centers that also include, but are not limited to, local funds, area matching funds, federal funds or other division categorical funds. When area programs elect to budget division categorical funds within a cost center with such other funds, the Division shall consider the Division categorical funds to be expended under the following criteria:

- (1) For all area program operated services: contracted group homes, and other contracted programs receiving at least 40 percent of their funding through the Division, the following is the order of expenditure:
  - (A) special grants from non-divisional sources that are for reimbursement of the same expenditures as those for which divisional categorical funds are appropriated (examples are grants from R.J. Reynolds, Division of Youth Services - Community-Based Alternative Funds);

- (B) block grant funds from the Division; and
- (C) state categorical funds from the Division.

Revenue from non-divisional sources and block grant funds shall be deducted from total cost center expenditures for the purpose of determining the net cost upon which the state categorical share is based. Client-earned income, such as payments received from patients or third parties (insurance, Medicare, Medicaid), which is received but not expended shall be retained by the area program or the contract program and be used to further the objectives of the legislation establishing the state categorical funding. When client-earned income results in an area program's or contract program's fund balance being in excess of 15 percent of its annual operating budget, the amount in excess of 15 percent shall be handled in accordance with the Division's rule on fund balances, Rule .1125 of this Subchapter.

- (2) For other contracted programs not receiving at least 40 percent of their funding through the Division, state categorical fund expenditures shall be based upon net cost determined by reducing total project cost by program-generated income, special grants from non-divisional sources and block grant funds that are received by the contractor as reimbursement of the same expenditures as those for which categorical funds are appropriated. Program-generated income is payment received from patients or third parties for services provided and fees received for personal services performed in connection with the categorical grant. For contracted programs:

- (A) The area program shall establish an expenditure and fund balance policy.
- (B) For contracted services, each contract shall detail how the expenditure and fund balance policy will apply to the contracted service.
- (C) If the area program contracts with a provider that also provides non-area program contractual services, the contracted provider shall be required to identify the fund balance for the area program contracted service only.

- (b) Expenditures for Title XX of the Social Security Act, 42 U.S.C. 1397 through 1397(f), Social Services Block Grant total cost programs shall continue to be budgeted and expended in

accordance with applicable Title XX matching formula and eligibility criteria.

(c) State and ~~Title XX Social Services Block Grant~~ adult developmental activity program funding shall, unless a total cost method of reimbursement is authorized by the Division, be based upon a unit cost rate determined by cost studies conducted by division staff. The reimbursement rate shall be based upon actual net cost (total cost less other sources of support) or the statewide maximum rate, whichever is less.

(d) State subsidy payments for ~~mental retardation~~ developmental disabilities day care and ~~mental retardation~~ developmental disabilities community residential service shall continue to be reimbursed on a statewide rate.

(e) Block grant funds shall be the first dollar expended after special grants from non-divisional sources so long as these funds do not supplant local or state funds. For the purpose of determining whether block grant funds are being used to supplant local or state funds within a current year, the prior year expenditure data shall be used. All revenues resulting from the block grant funded project shall be used by the service which produced the revenue. If existing services cannot be expanded or new services started, the revenues shall be used to reduce the amount of block grant.

*Statutory Authority G.S. 122C-112; 122C-147.*

#### SECTION .1100 - STATE AND FEDERAL FUNDS ADMINISTERED

##### .1115 FUNDING GROUP HOMES FOR MENTALLY RETARDED ADULTS

(a) Pursuant to G.S. 122C-141, the Division shall administer a program of grants to area programs to be called funds for group homes for mentally retarded adults.

(b) Such grants shall be used to support group homes for mentally retarded adults.

(c) Adults in whose behalf funds are administered to programs shall be:

- (1) 18 years of age and older; and
- (2) residents of North Carolina.

(d) To be eligible for funds for group homes for mentally retarded adults, the community shall provide residents with a total array of services and programs to meet their various needs and levels of capability and not just 24-hour care. These programs shall promote a complete life for these individuals in a community setting.

(e) Funds for group homes for mentally retarded adults shall be administered to area programs as direct grants and do not require local matching.

(f) Programs may spend funds for group homes for mentally retarded adults for the following:

- (1) to rent or lease facilities;
- (2) furniture or specialized equipment for residents;
- (3) transportation of residents;
- (4) other necessary operating expenses as approved by the Division; and
- (5) the purchase, construction or alteration, improvement or repair of a facility by the area program or a non-profit board with division approval with the exception of programs participating in federal Department of Housing and Urban Development (HUD) Section 202 projects which shall follow the requirements specified in (f)(6) of this Rule. The program shall meet the following requirements:

(A) The Group Home Mortgage Payment Program. The Division may participate in the mortgage payment program in part contingent upon the availability of state funds.

(B) The Group Home Purchase/ Construction Program.

(i) The Division may participate in the down payment or lump sum purchase or construction of a group home in whole or part contingent upon the availability of state funds.

(ii) The area program or non-profit board shall secure two property appraisals for review and approval by the Division prior to purchase.

(iii) If a new construction grant is requested, the area program shall submit two construction bid contracts from two building contractors to the appropriate regional office for review and approval prior to construction bid letting.

(C) A request for initial renovation of a newly acquired facility of five thousand dollars (\$5,000) or less shall be submitted to the appropriate regional office of the Division for approval. Initial minor repairs to facilities of less than one thousand dollars (\$1,000) shall be approved by the area program.

(D) A request for alteration or improvement of an existing facility in excess of five thousand dollars (\$5,000) shall be forwarded to the Division Director's office through the appropriate regional office of the Division for approval.

(E) Each request as outlined in (f)(5)(B) and (D) of this Rule shall be accompanied by a narrative that explains the need for the purchase, construction, alteration, im-

provement or repair of the facility and a copy of the schematic drawings and specifications. If approved by the Division of Mental Health, Mental Retardation and Substance Abuse Services, these drawings and specifications shall be forwarded to the Division of Facility Services for review and approval.

- (F) If the group home is operated by a non-profit board, the area program shall sign a legally binding contract with the private non-profit agency for either the mortgage payments to be made or the purchase or construction program as indicated in (A) and (B) of (f)(5) of this Rule. A copy of the appropriate contract shall be obtained from the controller's office of the central office of the Division.
- (G) If a facility owned by an area program or its private non-profit contract agency was purchased, altered, improved, or rehabilitated using division funds and later ceases to be used in the delivery of services to clients by the area program or its private non-profit contract agency, the facility shall be sold at the current fair market value as determined by two independent appraisals acceptable to the Division. The Division shall be reimbursed a pro rata share of the proceeds of the sale based on the percent of contribution made by the Division in the purchase, alteration, improvement or rehabilitation. The area program shall maintain records on a continuous basis which reflect the amount of contribution for purchase, alteration, improvement or rehabilitation by the Division, area program or other funding entity.
- (6) to participate in a federal Department of Housing and Urban Development (HUD) Section 202 project (12 U.S.C. §1701q) for the purchase, construction or alteration, improvement or repair of a group home with division approval. The program shall meet the following requirements:
  - (A) The area program may request funds for this project from the ~~division~~ Division. The Division may participate in the HUD Section 202 project contingent upon the availability of state funds.
  - (B) The area program shall sign a legally binding contract with a private non-profit agency to specify that if the group home ceases to be used in the delivery of services to the clients, the private non-profit agency shall reimburse the Division according to the following requirements:
    - (i) If the group home is sold, it should be sold at the current fair market value as determined by two independent appraisals acceptable to the Division and the Division shall be reimbursed a pro rata share of the selling price of the group home based on the contribution made by the Division in the purchase, construction, or alteration, improvement or repair of the group home.
    - (ii) If the group home is retained by the private non-profit agency, the Division shall be reimbursed a pro rata share of the current fair market value of the facility as determined by two independent appraisals acceptable to the Division based on the contribution made by the Division in the purchase, construction, or alteration, improvement or repair of the group home.
- (C) The area program shall maintain a record which reflects the amount of contribution made by the state for purchase, construction, or alteration, improvement or repair to the group home.
- (g) Fund Balance.
  - (1) The Division may allow group homes for mentally retarded adults to maintain a fund balance of no more than 15 percent of the current annual budget for the group home.
  - (2) The 15 percent fund balance shall be generated entirely by non-state funds.
  - (3) The Division may decrease state appropriation to a group home, thereby necessitating the group home to utilize its fund balance, if the state appropriation is required in order to continue operations at another home.
  - (4) The 15 percent fund balance allowed shall be in addition to the amount the Division would allow to remain in the fund balance due to restricted donations.
  - (5) Except for the restricted donations and the 15 percent fund balance, funds for group homes for mentally retarded adults shall be expended last.
  - (6) An allowance for a fund balance for group homes that are operated by an area program is made in Rule .1125 of this Section.
  - (h) To apply for funds for group homes for mentally retarded adults, an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the appropriate regional office of the Division.

(i) Funds for group homes for mentally retarded adults shall be allocated among the regions of the Division by the Division Director.

(j) Based on the approved annual plan and budget request submitted and availability of funds, allocation of funds for group homes for mentally retarded adults to area programs within each region shall be made by the Division Director or his designee.

(k) Clients residing in HUD-financed group homes, whose monthly income exceeds the HUD income criteria set forth in the HUD Handbook 33.50 "OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTI-FAMILY HOUSING PROGRAMS" and hereby adopted by reference including any subsequent amendments and editions, shall be charged a room and board rate higher than the established maximum rate in accordance with the provisions of 10 NCAC 47A .0201. For such residents, the excess rate shall be payable to HUD. Responsibilities and formula for payment of this excess amount are as follows:

- (1) The area program or private non-profit agency operating the home shall pay an amount not to exceed the first one hundred fifty dollars (\$150.00) of the excess amount above the HUD allowable maximum rate, and 20 percent of any amount that exceeds the one hundred fifty dollars (\$150.00).
- (2) The remaining 80 percent of the excess amount that exceeds the one hundred fifty dollars (\$150.00) shall either be paid by the resident or any other party who assumes the responsibility.

Statutory Authority G.S. 122C-112(a)(6), (11); 122C-141; 122C-147.

\* \* \* \* \*

Notice is hereby given in accordance with G.S. 150B-21.2 that DHR/Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 50B .0402.

The proposed effective date of this action is September 1, 1992.

The public hearing will be conducted at 1:30 p.m. on July 2, 1992 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, N.C. 27603.

Reasons for Proposed Action:

**10 NCAC 50B .0402 - Financial Responsibility and Deeming** - is being amended to require that when an individual under age 21 is in an institution for medical, surgical or inpatient psychiatric care, including inpatient treatment for substance abuse, and his care and treatment in that institution is anticipated to exceed twelve months, the duration of care must be reviewed and approved by the Division of Medical Assistance for parental financial responsibility not to be applied.

Under G.S. 143-127.1 when a child is in a medical institution and a physician has certified that his care and treatment is expected to exceed twelve months the income and assets of the child's parents are not included in determining his eligibility for Medicaid. If care and treatment are not expected to exceed twelve months the parents' income and resources are counted in determining the child's eligibility.

Evidence suggests that Medicaid policy is being abused in order to have the Medicaid Program cover inpatient psychiatric care for children under age 21 who come from middle and upper income families and that inpatient psychiatric placements are being used because the program does not cover residential treatment. Physicians are signing statements that institutional care exceeding 12 months is required, then children are being discharged within 3 to 4 months after the admission. Some hospitals have developed form certification statements that appear to be used across the board for physician certifications. Certification of the duration of care and treatment is often being made by physicians in the psychiatric hospital where the child will be admitted.

The amendment will allow for a medical review of the appropriateness of the anticipated duration of the care and treatment to determine if in fact it can be anticipated to exceed twelve months and thus parental financial responsibility not applied. If it is determined that the anticipated length of care and treatment will not exceed 12 months, the income and assets will be counted in determining the child's eligibility for Medicaid.

Additionally, the age limit for parents to be responsible for children in AFDC related cases is changed from under 19 to under 21. This corrects the rule to agree with federal requirements and what is in policy.

**Comment Procedures:** Written comments concerning this amendment must be submitted by July 2, 1992, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603, ATTN.: Bill Hottel, APA Coordinator. Oral comments may be presented at the hearing. In addition, a

*fiscal impact statement is available upon written request from the same address.*

## CHAPTER 50 - MEDICAL ASSISTANCE

### SUBCHAPTER 50B - ELIGIBILITY DETERMINATION

#### SECTION .0400 - BUDGETING PRINCIPALS

##### .0402 FINANCIAL RESPONSIBILITY AND DEEMING

The income and resources of financially responsible persons are deemed available to the applicant or recipient in the following situations:

- (1) For aged, blind and disabled cases in a private living arrangement financial responsibility exists for:
  - (a) spouses when living together or temporarily absent;
  - (b) parents for disabled or blind children under age 19 who are living in the household with them or temporarily absent.
- (2) For aged, blind and disabled cases in long term care, financial responsibility exist for:
  - (a) spouse to spouse only for the month of entry into a long term care facility;
  - (b) parents for dependent children under age 19 in skilled nursing facilities, intermediate care facilities, intermediate care facilities for the mentally retarded, or hospitals whose care and treatment is not expected to exceed 12 months as certified by the patient's physician.
- (3) For AFDC related cases, except pregnant women described at 42 U.S.C. 1396a(1), financial responsibility exists for:
  - (a) spouses when living together or one spouse is temporarily absent in long term care;
  - (b) parents for dependent children under age ~~19~~ 21 living in the home with them or temporarily absent;
  - (c) parents for dependent children under age ~~19~~ 21 in ~~skilled nursing facilities intermediate care facilities, or intermediate care facilities for the mentally retarded or hospitals~~ whose care and treatment is not expected to exceed 12 months as certified in writing by the patient's their attending physician.
  - (d) parents for dependent children under age 21 in institutions for medical, surgical or inpatient psychiatric care, including inpatient treatment for substance abuse, whose care and treatment is not expected to exceed 12 months, as certified in writing by their attending physician and approved by the Division of Medical Assistance.

- (4) For pregnant women described at 42 U.S.C. 1396a(1) financial responsibility exists for:
  - (a) The pregnant woman's spouse if living in the home or temporarily absent from the home;
  - (b) The father of the unborn child if not married to the pregnant woman but living in the home and acknowledging paternity of the unborn child.
- (5) Parental financial responsibility for children in private living arrangements or long term care facilities for whom the county has legal custody or placement responsibility is based on court ordered support and voluntary contributions from the parents.

*Authority G.S. 108A-54; 143-127.1; S.L. 1983, c. 761, s. 60(6); S.L. 1983, c. 1034; S.L. 1983, c. 1116; 42 C.F.R. 435.602; 42 C.F.R. 435.712; 42 C.F.R. 435.734; 42 C.F.R. 435.821; 42 C.F.R. 435.823.*

## TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the DEHNR - Division of Environmental Management intends to amend rule(s) cited as 15A NCAC 2A .0005.*

*The proposed effective date of this action is November 2, 1992.*

*The public hearing will be conducted at the following times, dates and locations:*

June 16, 1992

7:00 p.m.

*Jenkins Fine Arts Center  
East Carolina University  
Greenville, N.C.*

June 17, 1992

7:00 p.m.

*Main Room  
Clinton Civic Center  
Clinton, N.C.*

June 22, 1992

7:00 p.m.

*Auditorium  
Carteret Community College  
Morehead City, N.C.*

June 23, 1992

1:00 p.m.

Ground Floor Hearing Room  
Archdale Building  
Raleigh, N.C.

June 29, 1992  
7:00 p.m.

Humanities Lecture Hall  
UNC - Asheville  
Asheville, N.C.

June 30, 1992  
1:00 p.m.

Rotary Auditorium  
Mitchell Community College  
Statesville, N.C.

*Reason for Proposed Action:* To delegate to the Secretary of the Department authority to determine which dispersants can be used in the event of an oil spill.

*Comment Procedures:* All persons interested in this matter are invited to attend the hearings. Comments, statements, data and other information may be submitted in writing prior to, during or within 30 days after the hearings or may be presented orally at the hearings. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. For more information about the rules, contact Dennis Ramsey or Boyd DeVane, Division of Environmental Management, P.O. Box 29535, Raleigh, NC 27626-0535, (919) 733-5083. For copies of the rules, contact Linda Jones or Kay Stallings at the same number and address.

## CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

### SUBCHAPTER 2A - ORGANIZATION OF ENVIRONMENTAL MANAGEMENT COMMISSION

#### .0005 DELEGATIONS OF AUTHORITY

(a) The N.C. Environmental Management Commission therefore resolves that:

- (1) Whenever in these resolutions and rules ~~and/or regulations~~ there exists a delegation of authority to the Director, Office of Water and Air Resources (now the Division of ~~environmental management~~), Environmental Management, it shall become and read as a delegation of authority to the Secretary of the Department of Environment, Health, and Natural Resources ~~and Community Development~~ to act on behalf of the N.C. Environmental Management Commission; and

- (2) The Secretary of the Department of Environment, Health, and Natural Resources ~~and Community Development~~, in addition to the delegations mentioned in Paragraph ~~(b)(4)~~ (a)(1) of this Rule, is hereby delegated the authority to issue permits for the Environmental Management Commission as provided in N.C. General Statutes 143-215.1, 143-215.108, 143-215.109, 143-215.15, 143-215.28, and 87-88, and to approve the use of chemicals or other dispersants or treatment materials as provided in N.C. General Statute 143-215.84(a), and the Secretary or his delegate shall report all such issuances or approvals to the Commission; and

- (3) The Secretary of the Department of Environment, Health, and Natural Resources ~~and Community Development~~ may delegate such of these authorities to any qualified employee of the Department of Environment, Health, and Natural Resources ~~and Community Development~~ upon a finding by the Secretary of necessity in order to effectively and efficiently administer and enforce the rules ~~and/or regulations~~ of the N.C. Environmental Management Commission.

(b) Power to Enter ~~Tri Party~~ Operational Agreements. The Commission authorizes the Secretary, on behalf of the Commission, to enter into any future ~~tri party~~ operational agreements among the Commission, the developer of a condominium project or projects, and the condominium homeowners' association. The purpose of ~~a tri party~~ the operational agreement is to provide for an orderly transfer of permits issued to condominium project developers by the Commission; to identify the party to whom the developer will transfer the permit; and to guarantee that transferee homeowners' associations will comply with conditions of permits issued developers.

(c) Therefore, the Environmental Management Commission hereby resolves that: The Secretary, Department of Environment, Health, and Natural Resources ~~and Community Development~~ ~~ment~~ is authorized to:

- (1) determine eligibility of applicants in accordance with ~~Regulation .0201~~, Rule .0201, State Grants, found in Subchapter 2F of this Title;
- (2) give public notice of each eligible application as required in ~~Regulation .0201~~, Rule .0201, State Grants, found in Subchapter 2F of this Title;
- (3) notify the applicant of the Commissions' recommended grant award as required in

~~Regulation .0201, Rule .0201~~, State Grants, found in Subchapter 2F of this Title;

- (4) notify the applicant of a determination by the Commission of failure to qualify for a grant award as required in ~~Regulation .0201, Rule .0201~~, State Grants, found in Subchapter 2F of this Title;
- (5) forward to the Department of Administration a Certificate of Eligibility for each grant award as required in ~~Regulation .0201, Rule .0201~~, State Grants, found in Subchapter 2F of this Title;
- (6) prepare and file the annual report as required in ~~Regulation .0201, Rule .0201~~, State Grants, found in Subchapter 2F of this Title;
- (7) redelegate any or all of the above duties to employees of the Division of ~~environmental management~~ Environmental Management.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4).

\* \* \* \* \*

Notice is hereby given in accordance with G.S. 150B-21.2 that the DEHNR - Division of Environmental Management intends to amend rule(s) cited as 15A NCAC 2H .0201 - .0203, .0205 - .0206, .0208 - .0209, .0211, .0213, .0215, .0217 - .0220, .0222; and adopt rule(s) cited as 15A NCAC 2H .0223 - .0224.

The proposed effective date of this action is November 2, 1992.

The public hearing will be conducted at the following times, dates and locations:

June 16, 1992  
7:00 p.m.

Jenkins Fine Arts Center  
East Carolina University  
Greenville, N.C.

June 17, 1992  
7:00 p.m.

Main Room  
Clinton Civic Center  
Clinton, N.C.

June 22, 1992  
7:00 p.m.

Auditorium

Carteret Community College  
Morehead City, N.C.

June 23, 1992  
1:00 p.m.

Ground Floor Hearing Room  
Archdale Building  
Raleigh, N.C.

June 29, 1992  
7:00 p.m.

Humanities Lecture Hall  
UNC - Asheville  
Asheville, N.C.

June 30, 1992  
1:00 p.m.

Rotary Auditorium  
Mitchell Community College  
Statesville, N.C.

**Reasons for Proposed Actions:** The existing rules have been in need of updating for several years. The Division has required several additional protection measures that have not been added to the rules. Also, some new initiatives, such as animal wastes controls, are being considered.

**Comment Procedures:** All persons interested in this matter are invited to attend the hearings. Comments, statements, data and other information may be submitted in writing prior to, during or within 30 days after the hearings or may be presented orally at the hearings. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. For more information about the rules, contact Dennis Ramsey or Boyd DeVane, Division of Environmental Management, P.O. Box 29535, Raleigh, NC 27626-0535, (919) 733-5083. For copies of the rules, contact Linda Jones or Kay Stallings at the same number and address.

**Fiscal Note:** These Rules affect the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on March 23, 1992, OSBM on March 23, 1992, N.C. League of Municipalities on March 23, 1992, and N.C. Association of County Commissioners on March 23, 1992.

## CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

### SUBCHAPTER 2H - PROCEDURES FOR PERMITS: APPROVALS

## PROPOSED RULES

### SECTION .0200 - WASTE NOT DISCHARGED TO SURFACE WATERS

#### .0201 PURPOSE

These Rules set forth the requirements and procedures for application and issuance of permits for the following systems which do not discharge to surface waters of the state:

- (1) sewer systems;
- (2) disposal systems;
- (3) treatment works; ~~and~~
- (4) ~~sludge disposal systems;~~ residual disposal/utilization systems; and
- (5) treatment of petroleum contaminated soils.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.1.

#### .0202 SCOPE

These Rules apply to all persons proposing to construct, alter, extend, or operate any sewer system, treatment works, disposal system, petroleum contaminated soil treatment system or sludge disposal residual disposal/utilization system which does not discharge to surface waters of the state, including systems which discharge waste onto or below land surface. However, these Rules do not apply to sanitary sewage systems which are regulated by the Department of Human Resources, permitted under the authority of the Commission for Health Services.

Statutory Authority G.S. 130A-335; 143-215.1; 143-215.3(a)(1).

#### .0203 DEFINITION OF TERMS

The terms used in this Section shall be as defined in G.S. 143.213 except for G.S. 143-213(15) and (18)a. and as follows:

- (1) "Agronomist" means an individual who is a Certified Professional Agronomist by ARCPACS (American Registry of Certified Professionals in Agronomy, Crops and Soil) or an individual with a demonstrated knowledge in agronomy.
- (2) "Animal unit" means a unit of measurement used to compare different types of animal operations. The following equivalents based on federal definitions shall apply:

<u>Animal</u>	<u>Animal Unit</u>
<u>one mature dairy cow</u>	<u>1.4</u>
<u>one slaughter steer or heifer</u>	<u>1.0</u>
<u>one horse</u>	<u>2.0</u>
<u>one hog over 55 pounds</u>	<u>0.4</u>
<u>one hog under 55 pounds</u>	<u>0.05</u>
<u>one sheep</u>	<u>0.1</u>
<u>one duck</u>	<u>0.2</u>
<u>one turkey</u>	<u>0.018</u>
<u>one chicken</u>	<u>0.03</u>

- (3) "Animal waste" means livestock or poultry excreta or a mixture of excreta with feed, bedding, litter or other materials.
- (4) "Approved animal waste management plan" means a plan to properly collect, store, treat and/or apply animal waste to the land in an environmentally safe manner. The best management practice or system of practices which comprise the plan must meet the design, construction, operating and maintenance standards and technical specifications of the U.S. Department of Agriculture - Soil Conservation Service in Section IV of the Field Office Technical Guide or best management practices adopted by the Soil and Water Conservation Commission or any combination which the approving entity or agency deems to provide water quality protection. Plans are considered approved when they are certified by the respective Soil and Water Conservation District, or other agencies or entities approved by the Soil and Water Conservation Commission. These agencies or entities must certify that the minimum criteria for design and construction are met and that the operation and maintenance criteria can be met. The land owner must submit this certification to the Division of Environmental Management's Central Office on forms supplied by the Division. A new certification must be submitted for each change in land ownership.
- (5) ~~(2)~~ "Bedrock" means any consolidated or coherent and relatively hard, naturally-formed mass of mineral matter which cannot be readily excavated without the use of explosives or power equipment.
- (6) ~~(3)~~ "Building" means any structure or part of a structure built for the separate shelter or enclosure of persons, animals, chattels, or property of any kind and which has enclosing walls for at least 50 percent to its perimeter. Each unit separated from other units by a four hour fire wall shall be considered as a separate building.

- (7) ~~(4)~~ "Building drain" means that part of the lowest piping of a drainage system which receives waste from inside the building and conveys it to the building sewer which begins ten feet outside the building wall.
- (8) ~~(5)~~ "Building sewer" means that part of the horizontal piping of a drainage system which receives the discharge ~~of the~~ from a single building drain and conveys it directly to a public sewer, private sewer, or on-site sewage disposal system. Pipelines or conduits, pumping stations and appliances appurtenant thereto will not be considered to be building sewers if they traverse adjoining property under separate ownership or travel along any highway right of way.
- (9) ~~(6)~~ "C horizon" means the unconsolidated material underlying the soil solum, which may or may not be the same as the parent material from which the solum is formed but is below the zones of major biological activity and exhibits characteristics more similar to rock than to soil.
- (10) ~~(7)~~ "Director" means the Director of the Division of Environmental Management, Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources or his delegate.
- (11) ~~(8)~~ "Dedicated site" means a site:
  - (a) to which ~~sludge is~~ residuals are applied at rates or frequencies greater than agronomically justifiable, or where the primary use of the land is for ~~sludge residual~~ disposal and crop or ground cover production is of secondary importance, ~~or~~
  - (b) any ~~sludge residual~~ disposal site designated by the Director, or
  - (c) where the primary use of the land is for the treatment of soils containing petroleum products and crop or ground cover production is of secondary importance.
- (12) ~~(9)~~ "Division" or "(DEM)" means the Division of Environmental Management, Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources.
- (13) "Expanded animal waste treatment works and disposal/utilization system" means facilities which require an increase over the existing system design capacity.
- (14) "Feedlot" means a lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising or holding of animals and specifically designed as a confinement area in which animal waste may accumulate or where the concentration of animals is such that a vegetative cover cannot be maintained. Pastures shall not be considered feedlots under this Rule.
- (15) ~~(10)~~ "Groundwaters" means those waters in the saturated zone of the earth as defined in 15A NCAC 2L.
- (16) ~~(11)~~ "Industrial wastewater" means all wastewater other than sewage and includes:
  - (a) wastewater resulting from any process of industry or manufacture, or from the development of any natural resource;
  - (b) wastewater resulting from processes of trade or business, including wastewater from laundromats and ~~car~~ vehicle/equipment washes, but not wastewater from restaurants;
  - (c) stormwater will not be considered to be an industrial wastewater unless it is contaminated with an industrial wastewater;
  - (d) any combination of sewage and industrial wastewater;
  - (e) municipal wastewater will be considered to be industrial wastewater unless it can be demonstrated to the satisfaction of the Division that the wastewater contains no industrial wastewater;
  - (f) petroleum contaminated groundwater extracted as part of an approved groundwater remediation system.
- (17) "Infiltration gallery" means a subsurface ground absorption system expressly designed for the introduction of previously treated petroleum contaminated water into the subsurface environment.
- (18) "New animal waste treatment works and disposal/utilization system" means facilities which are constructed and operated at the site where no feedlot existed previously or where a feedlot has been abandoned or unused for a period of two years or more.
- (19) "Petroleum contaminated soil" or "Soil containing petroleum products" shall mean any soil that has been exposed to petroleum products because of any emission, spillage, leakage, pumping, pouring, emptying, or dumping of petroleum products onto or beneath the land surface and that exhibits characteristics or concentrations of typical petroleum product constituents in sufficient quantities as to be detectable by compatible laboratory analytical procedures.
- (20) "Petroleum product" means all petroleum products as defined by G.S. 143-215.94A(7) and includes motor gasoline, aviation gasoline, gasohol, jet fuels, kerosene, diesel fuel, fuel oils (#1-#6), and motor oils (new and used).
- (21) ~~(12)~~ "Pollutant" means waste as defined in G.S. 143-213(18).

## PROPOSED RULES

- (22) (13) "Private sewer" means any part of a sewer system which collects wastewater from more than one building, is privately owned and is not directly controlled by a public authority.
- (23) (14) "Professional engineer" means a person who is presently registered and licensed as a professional engineer by the North Carolina State Board of Registration For Professional Engineers and Land Surveyors.
- (24) (15) "Public or community sewage system" means a single system of sewage collection, treatment, and/or disposal owned and operated by a sanitary district, a metropolitan sewage district, a water and sewer authority, a county, a municipality, or a public utility.
- (25) (16) "Public sewer" means a sewer located in a dedicated public street, roadway, or dedicated public right-of-way or easement which is owned or operated by any municipality, county, water or sewer district, or any other political subdivision of the state authorized to construct or operate a sewer system.
- (26) (17) "Rapid infiltration system" means rotary distributor systems or other similar systems that dispose of tertiary treated waste at high surface area loading rates of greater than 1.5 gpd/ft<sup>2</sup>.
- (27) (20) "~~Sludge~~" "Residuals" means any solid or semisolid waste, other than residues from agricultural products and processing generated from a wastewater treatment plant, water supply treatment plant or air pollution control facility permitted under the authority of the Environmental Management Commission.
- (28) "Residues from agricultural products and processing" means solids, semi-solids or liquid residues from food and beverage processing and handling; silviculture; agriculture; and aquaculture operations that are non-toxic, non-hazardous and contain no domestic wastewater.
- (29) (18) "Sewage" means the liquid and solid human waste, and liquid waste generated by domestic water-using fixtures and appliances, from any residence, place of business, or place of public assembly. Sewage does not include wastewater that is totally or partially industrial wastewater, or any other wastewater not considered to be domestic waste.
- (30) (19) "Sewer system" means pipelines or conduits, pumping stations, specialized mode of conveyance and appliances appurtenant thereto, used for conducting wastes to a point of ultimate disposal.
- (31) "Soil remediation at conventional rates" means the utilization of soils containing petroleum products by land application methods, at an evenly distributed thickness not to exceed six inches.
- (32) "Soil remediation at minimum rates" means the treatment of soils containing petroleum products by land application methods, at an evenly distributed application thickness not to exceed an average of one inch.
- (33) (21) "Soil scientist" means an individual who is a Certified Professional in Soils through the ~~N.C. Soil Science Society~~ NCRCPS (N.C. Registry of Certified Professionals in Soils) or a Certified Professional Soil Scientist or Soil Specialist by ARCPACS (American Registry of Certified Professionals in Agronomy, Crops and Soils) or ~~an individual with a demonstrated knowledge in soils science.~~ a Registered Professional Soil Scientist by NSCSS (the National Society of Consulting Soil Scientist) or can provide documentation that he/she meets the minimum education and experience requirements for certification or registration by one or more of the organizations named in this Subparagraph.
- (34) (22) "Staff" means the staff of the Division of Environmental Management, Department of ~~Natural Resources and Community Development.~~ Environment, Health, and Natural Resources.
- (35) (23) "Subsurface ground absorption sewage disposal system" means a waste disposal method which distributes waste beneath the ground surface and relies primarily on the soil for leaching and removal of dissolved and suspended organic or mineral wastes. Included are systems for public or community sewage systems and systems which are designed for the disposal of industrial wastes. Land application systems utilizing subsurface ~~sludge residual~~ injection are not included.
- (36) (24) "Surface waters" means all waters of the state as defined in G.S. 143-213(20) except underground waters.
- (37) (25) "Toxicity test" means a test for toxicity conducted using the procedures contained in 40 CFR 261, Appendix II as amended through ~~July 1, 1986~~ July 18, 1991 or any later adopted amendments or additions of this document. ~~as is allowed by G.S. 150B-14(c).~~ Copies of this publication are available from the Government Institutes, Inc., 4 Research Place, Suite 200, Rockville, MD 20850-1714 for a cost of thirty-six dollars (\$36.00) each plus four dollars (\$4.00) shipping and handling. Copies are also available for review at the Division of Environmental Management, Archdale Building, 512 N. Salisbury Street, P.O. Box 29535, Raleigh, North Carolina 27626-0535.

- (38) ~~(26)~~ "Treatment works or disposal system which does not discharge to surface waters" means any treatment works or disposal system which is designed to:
- (a) operate as closed system with no discharge to waters of the state, or
  - (b) dispose ~~dispose~~/utilization of wastes, including ~~residual sludges, after treatment~~ residuals, residues, contaminated soils and animal waste, to the surface of the land, or
  - (c) dispose of wastes through a subsurface absorption system.
- (27) ~~"Underground waters" means all waters in the subsurface including waters in the unsaturated and saturated zone.~~
- (39) "Waste oil" means any used nonhazardous petroleum product other than crankcase oil. Crankcase oil mixed with other used nonhazardous petroleum products will be considered as waste oil.

*Statutory Authority G.S. 130A-335; 143-213; 143-215.3(a)(1).*

**.0205 APPLICATION: PERMIT FEES: SUPPORTING INFORMATION: REQMTS**

(a) Jurisdiction. Applications for sewer system extensions under the jurisdiction of a local sewer system program shall be made in accordance with applicable local laws and ordinances. Applications for permits from the Division shall be made in accordance with this Rule as follows.

(b) Applications. Application for a permit must be made in triplicate on official form completely filled out, where applicable, and fully executed in the manner set forth in Rule .0206 of this Section. A processing fee as described herein must be submitted with each application in the form of a check or money order made payable to N.C. Department of Environment, Health, and Natural Resources. Applications may be returned if not accompanied by the processing fee or are incomplete. The signature of the consulting engineer or other agent will be accepted on the application only if accompanied by a letter of authorization.

(c) Permit Fees.

- (1) Permit Application Processing Fee. For every application for a new or revised permit under this Section, a nonrefundable application processing fee in the amount stated in Subparagraph (5) of this Paragraph shall be submitted at the time of application.
  - (A) Each permit or renewal application is incomplete until the application processing fee is received;
  - (B) For a facility with multiple treatment units under a single permit, the processing fee shall be set by the total design treatment capacity;
  - (C) No processing fee will be charged for modification of unexpired permits when the modifications are initiated by the Director;
  - (D) A processing fee of ~~fifty dollars (\$50.00)~~ one hundred dollars (\$100.00) will be charged for name changes. Name changes requested at the time of permit renewal, with no other changes, will be charged the renewal without modification fee;
  - (E) A full application processing fee will be charged for all modifications except for name changes; this fee will be in the same amount as shown in Subparagraph (5) of Paragraph (c) of this Rule for new applications/modifications.
  - (F) Permittees requesting new or modified special orders by consent, judicial orders or flow increases under G.S. 143-215.67(b), will pay a fee of four hundred dollars (\$400.00)
- (2) Annual Administering and Compliance Monitoring Fees. An annual fee for administering and compliance monitoring shall be charged in each year of the term of every renewable permit according to the schedule in Subparagraph (5) of this Paragraph. Annual fees will not be charged for permits which do not require renewal.
  - (A) Collection of annual fees shall begin on the effective date of this Rule.
  - (B) Annual administering and compliance monitoring fees must be paid for any facility operating on an expired permit after the effective date of this Rule. The Director shall establish an anniversary date for such a facility and notify the responsible party of the requirement to pay annual fees.
  - (C) For a facility with multiple treatment units under a single permit, the annual administering and compliance monitoring fee shall be set by the single treatment system with the highest fee in the fee schedule.
  - (D) A person with only one permit will be billed annually on an anniversary date to be determined by the Division. This will normally be the first day of the month of permit issuance.

## PROPOSED RULES

- (E) A person with multiple permits may have annual administering and compliance monitoring fees consolidated into one annual bill.
- (F) Any permittee which has maintained full compliance with all permit conditions during the previous calendar year will have its administering and compliance monitoring annual fee reduced by 25 percent. Permittees operating under interim limits, judicial orders, ~~or~~ special orders by consent will not be eligible for any discount. Full compliance will be established if it can be certified by the Director that no Notice of Noncompliance, ~~or~~ Notice of Violation or penalty assessment was sent to the permittee during the compliance period being considered. If a Notice of Noncompliance or Notice of Violation was based on erroneous information, the Director can send a letter of correction to the permittee clearing the record for compliance purposes.
- (G) A change in the facility which changes the annual fee set by Subparagraph (5) of Paragraph (c) of this Rule will result in the revised annual fee being billed in all remaining whole permit years.
- (H) Closed-loop recycle or evaporative systems, which store or recycle industrial waste and do not discharge to the surface water, groundwater or land surface, shall be charged a constant annual administering and compliance monitoring fee for all sizes of facilities at the fee amount shown by Subparagraph (5) of Paragraph (c) of this Rule.
- (3) No fees are required to be paid under this Rule by a farmer who submits an application or receives a permit that pertains to farming operations.
- (4) Failure to pay an annual administering and compliance monitoring fee within 30 days after being billed may cause the Division to initiate action to revoke the permit.
- (5) Schedule of Nondischarge Fees:

CATEGORY	PERMIT APPLICATION PROCESSING FEE		ANNUAL ADMINISTERING AND COMPLIANCE MONITORING FEE	
	NEW APPLICATIONS/ MODIFICATIONS/ <u>LATE RENEWALS</u>	<u>TIMELY</u> RENEWALS WITHOUT MODIFICATIONS	IN STANDARD COMPLIANCE	
> 1,000,000 GPD				
Industrial	\$400.	\$300.	\$1500.	\$1125.
<del>Domestic/Cooling Water</del>				
<u>Sewage/Cooling Water</u>	400.	300.	1200.	900.
10,0001 - 1,000,000 GPD				
Industrial	400.	250.	800.	600.
<del>Domestic/Cooling Water</del>				
<u>Sewage/Cooling Water</u>	400.	250.	600.	450.
1,001 - 10,000 GPD				
Industrial	400.	200.	600.	450.
<del>Domestic/Cooling Water</del>				
<u>Sewage/Cooling Water</u>	400.	200.	450.	300.
< / = 1000 GPD and				
Single family dwelling	240.	120.	0	0
<u>Sludge</u>				
<u>Residuals/Residues/Compost</u> < / = 300 acres	400.	250.	600.	450.
<u>Sludge</u> > / =				
<u>Residuals/Residues/Compost</u> > 300 acres	400.	250.	1000.	750.

## PROPOSED RULES

<u>Soils Remediation: nondedicated (land application, storage and/or treatment)</u>	<u>400.</u>	<u>200.</u>	<u>0</u>	<u>0</u>
<u>Soils Remediation: dedicated (land application, storage and/or treatment)</u>	<u>400.</u>	<u>200.</u>	<u>300.</u>	<u>225.</u>
Sewer extensions (nondelegated)	400.	0	0	0
Sewer extensions (delegated to municipalities)	200.	0	0	0
Closed-loop recycle or evaporative system	400.	200.	300.	225.

- (6) If the total payment for fees required for all permits under G.S. 143-215.3(a)(1b) for any single facility will exceed seventy-five hundred dollars (\$7,500.00) per year, then the total for all these fees will be reduced for this facility so that the total payment is seventy-five hundred dollars (\$7,500.00) per year.
- (7) A portion of the permit application processing fees shown in the fee schedule in Subparagraph (5) of Paragraph (c) of this Rule will be transferred into the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund according to the following schedule:
  - (A) All nonmunicipal facilities treating domestic wastewater with design flows of 100,000 gallons per day or less, except individually permitted single family dwellings and facilities with design flows of less than 1,000 GPD, seventy-five dollars (\$75.00);
  - (B) Single family dwellings and facilities with design flows of less than 1,000 GPD, forty dollars (\$40.00); and
  - (C) All other facilities, zero.
- (8) When the total value of the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund, as certified by the State Treasurer, is at least seven hundred fifty thousand dollars (\$750,000.00) at the end of a quarter, the application processing fees for facilities with capacities of one hundred thousand gallons per day (100,000 GPD) or less shall be reduced by the amounts being transferred under Subparagraph (7) of this Paragraph. This reduction shall continue until, at the end of some subsequent quarter, the State Treasurer certifies that the fund's balance is less than seven hundred fifty thousand dollars (\$750,000.00), in which case the full amount of the application processing fees as listed in Subparagraph (5) of this Paragraph shall be charged.
- (9) In order to avoid violation of the statutory limit that total permit fees collected in any year not exceed 30 percent of the total budgets from all sources of environmental permitting and compliance programs, the Division shall in the first half of each state fiscal year project revenues from all sources including fees for the next fiscal year. If this projection shows that the statutory limit will be exceeded, rulemaking shall be commenced in order to have an appropriately adjusted fee schedule which will avoid excessive revenue collection from permit fees.
- (10) Accompanying the payment of the Annual Administering and Compliance Monitoring Fee shall be a written description of current waste minimization and waste reduction activities during the past annual billing cycle and project plans for the present billing cycle to reduce the discharge of wastes and pollutants by source reduction or recycling.
  - (d) Supporting Documents and Information. This Paragraph outlines those supporting documents and information which must be submitted for sewers, sewer extensions, and disposal systems and wastewater treatment works which do not discharge to the surface waters of the state.
    - (1) ~~For all facilities:~~ General Requirements:
      - (A) Required sets of plans and specifications:
        - (i) regular projects -- ~~three~~ two sets of detailed plans and specifications for sewer projects and four sets of detailed plans and specifications signed and sealed by a professional engineer, for all other projects;
        - (ii) federal and state ~~grants~~ grants loan projects -- four sets of detailed plans and specifications plus federal assurances required by appropriate federal agency;

## PROPOSED RULES

- (iii) plans and specifications must be signed and sealed by a Professional Engineer. The only exceptions from the Professional Engineer requirement are as follows:
- (I) projects proposing the land application of residues, residuals and/or compost at agronomic rates, when no storage units are being proposed and no treatment of the material is being proposed other than that provided by the soil and exposure to the atmosphere,
  - (II) projects proposing the land application of contaminated soils, when no storage units are being proposed and no treatment of the material is being proposed other than that provided by the soil and exposure to the atmosphere,
  - (III) projects for the settling of solids from sand dredging projects or tourist gem mining operations, when the only treatment provided is settling ponds or basins,
  - (IV) projects utilizing only incinerating toilets,
  - (V) projects for the disposal/utilization of animal waste deemed to be permitted in accordance with 15A NCAC 2H .0217,
  - (VI) projects for ground water remediation that do not consist of any treatment or storage units,
  - (VII) the Director may on a case by case basis remove this exception based on documented or projected environmental impacts and/or nuisance conditions.
- (B) Specifications describing all materials to be used, methods of construction and means for assuring the quality and integrity of the finished project;
- (C) A general location map, showing orientation of the facility with reference to at least two geographic references (numbered roads, named streams/rivers, etc.);
- (D) A description of the origin, type and flow of waste to be treated. Waste analysis must be extensive enough to allow a complete evaluation of the system to treat the waste and any potential impacts on the waters of the state;
- (E) When required, a statement submitted that the wastewater treatment facility involved will be properly disconnected and the wastewater discharged into an adequate district or municipal system when it becomes available;
- (F) Permits which result in construction of facilities which will be funded by public monies may require environmental documentation pursuant to the North Carolina Environmental Policy Act. Permit applications for which such documentation is required will not be considered complete until supported by the required documentation;
- (G) If more than one ~~contiguous~~ acre of land is to be uncovered by a project, documentation should be supplied verifying that the applicant has completed or is working with the appropriate regional engineer of the Land Quality Section on the completion of an erosion control plan.
- (H) A Residuals Management Plan must be submitted for all treatment systems that generate residuals and must include the following:
- (i) A detailed explanation as to how the residuals will be stabilized. In addition if the residuals are generated from a system treating sewage, the explanation must show that the stabilization process meets or exceeds EPA's criteria for a Process to Significantly Reduce Pathogens (PSRP) as defined in 40 CFR Part 257 Appendix II or any later adopted amendments or additions to this document,
  - (ii) An evaluation of the residual storage requirements for the treatment facility. A minimum of 30 days storage will be required on all facilities. Storage shall be calculated based upon average residuals production rate and shall be units separate from the treatment system, i.e., not the clarifiers, aeration basins nor digestion facilities. Additional storage may be required based on the method of final disposition/utilization,
  - (iii) A written commitment from a division approved residual disposal/utilization site for the acceptance of the residual and which demonstrates that the Division approved site has adequate capacity to accept the residual,
- (2) For wastewater facilities specified in G.S. 143-215.1 (d1) that are or will be jointly or commonly owned, either a copy of a properly executed operational agreement or evidence to show that the applicant has been designated as a public utility by the State Utilities Commission.
- (3) For sewers and sewer extensions:
- (A) design flow;
  - (B) rate of infiltration in gallons per day per inch of pipe diameter per mile of pipe;
  - (C) letter of agreement from owner or proper official of treatment works accepting the wastewater, if application is not submitted by owner or proper official having charge of treatment works;

- (D) plan and profile of sewers, showing their proximity to other utilities and natural features, such as water supply lines, water lines, wells, storm drains, surface waters, roads and other trafficked areas.
- (E) Construction of sewers and sewer extensions are prohibited in the following areas unless the specified determinations are made:
  - (i) in a natural area designated on the State Registry of Natural Heritage Areas by a protection agreement between the owner and the Secretary of the N.C. Department of Environment, Health, and Natural Resources, unless the EMC agrees that no prudent, feasible or technologically possible alternative exists;
  - (ii) in a natural area dedicated as a North Carolina Nature Preserve by mutual agreement between the owner and State of North Carolina (Governor and Council of State), unless the EMC recommends and the Governor and Council of State agree that no prudent, feasible or technologically possible alternative exists.
- (4) For pumping stations:
  - (A) design calculations for pump and force main sizing;
  - (B) plan and profile of sewers, showing their proximity to other utilities and natural features, such as water supply lines, water lines, storm drains, surface waters, roads and other trafficked areas;
  - (C) pump station site location map;
  - (D) name and classification of adjacent surface waters which could be affected by a failure.
- (5) For subsurface ground absorption systems including infiltration galleries:
  - (A) soil evaluation of the disposal site conducted by a soils scientist to adequately evaluate the soils to be utilized for treatment and disposal down to a depth of seven feet to include, but is not limited to, field descriptions of texture; color; structure, the depth thickness and type of restrictive horizons; pH; the presence or absence and depth of evidence of any seasonal high water table; recommendations concerning application rates of liquids, solids, and other wastewater constituents; field estimates of saturated hydraulic conductivity in the most restrictive horizon; and cation exchange capacity. Applicants may be required to dig pits when necessary for proper evaluation of the soils at the site;
  - (B) design data;
  - (C) plans of complete system including plan and profile and cross section views for all relevant system components;
  - (D) a map of the site, with topographic contour intervals not exceeding two feet and showing all facility-related structures and fences within the property boundary, all test auger borings and/or inspection pits and the location of all wells, springs, lakes, ponds, or other surface drainage features within 500 feet of the principal waste treatment/disposal site(s);
  - (E) For systems treating industrial waste and any system with a design flow of over 25,000 gpd, a hydrogeologic and soils description of the subsurface to a depth of 20 feet or bedrock, whichever is less. The number of borings shall be sufficient to define the following for the area underlying each major soil type at the disposal site:
    - (i) significant changes in lithology underlying the site;
    - (ii) the vertical permeability of the unsaturated zone and the hydraulic conductivity of the saturated zone, and
    - (iii) depth to the mean seasonal high water table (if definable from soil morphology or from evaluation of other applicable available data).
  - (F) For all projects with a design flow of greater than 25,000 gpd, a determination of transmissivity and specific yield of the unconfined aquifer based on withdrawal or recharge test;
  - (G) Information on the location, construction details, and primary usage (drinking water, process water, monitoring, etc.) of all wells within 500 feet of the waste treatment/disposal area;
  - (H) Degree of treatment (primary, secondary, tertiary);
  - (I) For industrial waste a complete chemical analysis of the typical wastewater ~~or sludge~~ to be discharged, may include but not limited to Total Organic Carbon, BOD, COD, Chlorides, Phosphorus, Ammonia, Nitrates, Total Nitrogen, Calcium, Sodium, Magnesium, Sodium Adsorption Ratio (SAR) Calculations, Phenol, Total Trihalomethanes, Toxicity test parameters, Total Halogenated Compounds, Total Volatile Organics, Total Coliforms and Total Dissolved Solids;
  - (J) proposed location and construction details of a monitoring well network.
- (6) For land application of ~~sludge~~ residuals on other than dedicated sites:

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- (A) a map of the site with topographic contour intervals not exceeding ten feet or 25 percent of total site relief, whichever is less, and showing all facility related structures within the property boundary and the location of all wells, pits and quarries, springs, lakes, ponds, or other surface drainage features within 500 feet of the disposal site;
- (B) a soil scientist's recommendations, or the recommendations of an individual with at least three years experience in evaluation of soils for application of residuals, concerning application rates of liquids, solids, minerals and other wastewater constituents;
- (C) a project evaluation conducted by an agronomist including recommendations concerning cover crops and their ability to accept the proposed application rates of liquids, solids, minerals, and other wastewater constituents;
- (D) project description for the land application system, including treatment, storage, land application method, equipment, and a receiver management plan;
- (E) for industrial wastes, a complete chemical analysis of the typical wastewater or ~~sludge~~ residuals to be applied may include, but is not limited to percent Total Solids, pH, ~~NH<sub>3</sub>-N~~, ~~NO<sub>3</sub>-N~~, Ammonia, Nitrates, TKN, Total Phosphorus, Potassium, Toxicity test parameters, Cadmium, Chromium, Copper, Lead, Nickel, Zinc, Mercury, Arsenic, Selenium, Calcium, Sodium, Magnesium and Sodium Adsorption Ratio (SAR) Calculations;
- (F) information on the location, construction details, and primary usage (drinking water, process water, monitoring, etc.) of all wells within 500 feet of the disposal site;
- (G) For sites previously permitted: Soil evaluation of the application sites by a soils scientist, or an individual with at least three years experience in evaluation of soils for application of residuals, to confirm or establish the soil map through field evaluation of soil texture; color; structure; the depth, thickness, and type of restrictive horizons; the presence or absence of seasonal high water table within three vertical feet of the surface or subsurface application depth; pH; and cation exchange capacity;
- (H) For sites not previously permitted:
  - (i) A USDA-SCS soils map of the application site. In addition, a soil evaluation of the application site by a Soils Scientist, to verify the accuracy of the SCS soils map regarding or an individual with at least three years experience in evaluation of soils for application of residuals, which includes the soil evaluation and verification of the presence or absence of a seasonally high water table or bedrock within three vertical feet of the deepest point of ~~sludge~~ residual application; and cation exchange capacity;
  - (ii) If a USDA-SCS soils map of the application site is not available, soil evaluation of the disposal site by a soils scientist, or an individual with at least three years experience in evaluation of soils for application of residuals, down to a depth of seven feet or the "C" horizon, whichever is less, to develop a soil map through field evaluation of soil texture; color; the depth, thickness, and type of restrictive horizons; the presence ~~of~~ or absence of a seasonal high water table, or bedrock within three vertical feet of the deepest point of ~~sludge~~ residual application; pH; and cation exchange capacity.
- (I) For sites which are to receive residuals from one or more industrial source, as defined in 15A NCAC 2H .0203 specific areas shall be designated and utilized to receive residuals from each municipal, regional or industrial source. Residuals from more than one facility under common ownership may be considered as a single source.
- (J) Sites will only be permitted in water supply watersheds when allowed by 15A NCAC 2B .0200.
- (7) For spray irrigation, land application of residuals on dedicated sites, or ~~sludge disposal~~ residual disposal/utilization systems and treatment works, except for rapid infiltration disposal systems and systems for composting ~~sludge~~ residual for land application:
  - (A) a map of the site, with topographic contour intervals not exceeding ten feet or 25 percent of total site relief, whichever is less, and showing all facility-related structures and fences within the property boundary, all test auger borings and/or inspection pits and the location of all wells, pits and quarries, springs, lakes, ponds, or other surface drainage features within 500 feet of the waste treatment/disposal site(s);
  - (B) the information specified in Subsections (d) (5) (E), (F), (H) and (I) of this Rule;
  - (C) soil evaluation of the disposal site conducted by a soils scientist to adequately evaluate the soils to be utilized for treatment and disposal down to a depth of seven feet to include, but is not limited to field descriptions of texture; color; structure; the depth; thickness and type of restrictive horizons; the presence or absence and depth of evidence of any seasonal high water table; recommendations concerning application rates of liquids, solids, and other wastewater

- constituents; field estimates or measurements of saturated hydraulic conductivity in the most restrictive horizon; and cation exchange capacity. Applicants may be required to dig pits when necessary for proper evaluation of the soils at the site;
- (D) a project evaluation and a receiver site management plan (if applicable) prepared by an agronomist and his recommendations concerning cover crops and their ability to accept the proposed application rates of liquid, solids, minerals and other constituents of the wastewater;
  - (E) complete plans and specifications for the entire system, including treatment, storage, application, and disposal facilities and equipment. Treatment works previously permitted will not need to be shown, unless they are directly tied into the new units or are critical to the understanding of the complete process;
  - (F) a complete chemical analysis of the typical wastewater or ~~sludge residual~~ to be treated, may include but not limited to Percent Total Solids, pH, Total Organic Carbon, BOD, COD, Ammonia, Nitrates, TKN, Chlorides, Sodium, Phosphorus, Sulfides, Bicarbonate, Magnesium, Calcium, Nitrates, Phenol, Total Trihalomethanes, ~~EP~~ Toxicity test parameters, Total Halogenated Compounds, Total Volatile Organic Compounds, Total Coliforms and Total Dissolved Solids;
  - (G) proposed location and construction details of a monitoring well network;
  - (H) information on the location, construction details, and primary usage (drinking water, process water, monitoring, etc.) of all wells within the 500 feet of the disposal site;
  - (I) for sites which are to receive residuals from more than one source, specific areas should be designated to receive residuals from each municipal, regional and industrial source;
  - (J) site will only be permitted in water supply watersheds when allowed by 15A NCAC 2B .0200. Residuals from more than one facility under common ownership may be considered as a single source.
- (8) For systems for composting ~~sludge~~ and chemically or otherwise stabilizing residuals for land application which meet PFRP requirements:
- (A) a map of the processing site, with topographic contour intervals not exceeding 10 feet or 25 percent of total site relief, whichever is less, and showing all facility-related structures within the property boundary and the location of all wells, springs, lakes, ponds, or other surface drainage features within 500 feet of the principal waste treatment/disposal site(s);
  - (B) complete plans and specifications for the entire system, including facilities and equipment for treatment, storage and preparation for disposal, disposal/utilization, as well as a detailed description of the process to be utilized;
  - (C) for industrial waste, a hydrogeologic description of the subsurface, to a depth of 20 feet or bedrock, whichever is less. The number of borings shall be sufficient to define the following for the area underlying each major soil type at the disposal site:
    - (i) significant changes in lithology underlying the site;
    - (ii) the vertical permeability of the unsaturated zone and the hydraulic conductivity of the saturated zone; and
    - (iii) depth to the mean seasonal high water table (if definable from soil morphology or from evaluation of other applicable available data);
  - (D) proposed location and construction details of a monitoring well network;
  - (E) a detailed marketing and distribution plan;
  - (F) a copy of proposed usage guidance to be distributed with the residuals;
  - (G) if the residuals are to be packaged, a copy of the proposed label to be used;
  - (H) a detailed description of the proposed record keeping system to be used to track the distribution and usage of the residuals;
  - (I) projects for the land application of compost and chemically or otherwise stabilized residuals that are generated in North Carolina or shipped into North Carolina in bulk form and then distributed in bulk form will be required to obtain nondischarge permits from the Division of Environmental Management. Land application site permitting will be required unless the applicant can demonstrate to the satisfaction of the Director that site specific permitting is not warranted due to the method of distribution and other controls on the application of the material.
- (9) For closed system or recycle disposal systems and treatment works:
- (A) for industrial waste, a complete chemical analysis of the typical wastewater or ~~sludge residual~~ to be ~~discharged, treated,~~ may include but not limited to Total Organic Carbon, BOD, COD, Chlorides, Phosphorus, Nitrates, Phenol, Total Trihalomethanes, ~~EP~~ Toxicity test parameters,

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Total Halogenated Compounds, Total Volatile Organic Compounds, Total Coliforms, Metals and Total Dissolved Solids;

- (B) plans and specifications of the entire system. When necessary for an understanding of a treatment process, the applicant should also submit process flow diagrams, manufacturers specifications and historical operational data from comparable facilities;
- (C) For industrial waste, a hydrogeologic description of the subsurface to a depth of 20 feet or bedrock, whichever is less. The number of borings shall be sufficient to define the following for the area underlying each major soil type at the disposal site:
- (i) significant changes in lithology underlying the site;
  - (ii) the vertical permeability of the unsaturated zone and the hydraulic conductivity of the saturated zone; and
  - (iii) depth to the mean seasonal high water table (if definable from soil morphology or from evaluation of other applicable available data).
- (10) For ~~RAPID INFILTRATION SYSTEMS:~~ rapid infiltration systems:
- (A) a map of the site, with a horizontal scale of one inch equal 1,000 feet or less and topographic contour intervals not exceeding two feet or 25 percent of the total site relief, whichever is less, and showing all facility-related structures and fences within the property boundary, all test auger borings and/or inspection pits and the location of all wells, springs, lakes, ponds or other surface drainage features within 500 feet of the principal waste treatment/disposal site(s);
  - (B) hydrogeological information describing the vertical and horizontal extent and lithologic character of the unconfined aquifer and its hydraulic relationship to the first confined aquifer beneath the site and the vertical permeability and thickness of the confining bed. The information must also include a determination of the transmissivity and specific yield of the unconfined aquifer, determined by either a withdrawal or recharge test;
  - (C) a determination of the quality and movement of groundwater and surface water in the area and an evaluation of the impact that the proposed system will have on water levels, movement and quality of waters;
  - (D) complete plans and specifications for the entire system, including treatment storage and rotary distributor facilities and equipment;
  - (E) the information specified in Rule .0205 (d) (5) (H) of this Section;
  - (F) proposed location and construction details of monitoring well network;
  - (G) proposed monitoring plan including the method of determining groundwater levels and quality of water parameters and frequency of sampling.
- (11) For land application of agricultural products and processing residues on other than dedicated sites:
- (A) a map of the site with topographic contour intervals not exceeding 10 feet or 25 percent of total site relief, whichever is less, and showing all facility related structures and fences within the property boundary, all test auger borings and/or inspection pits and the location of all wells, pits and quarries, springs, lakes, ponds, or other surface drainage features within 500 feet of the application site;
  - (B) a soil scientist's recommendations, or the recommendations of an individual with at least three years experience in evaluation of soils for application of residuals, concerning application rates of liquids, solids, minerals and other wastewater constituents;
  - (C) a project evaluation conducted by an agronomist including recommendations concerning cover crops and their ability to accept the proposed application rates of liquids, solids, minerals, and other residual constituents;
  - (D) project description for the land application system, including treatment, storage, land application method, equipment and a receiver management plan;
  - (E) a complete chemical analysis of the typical residue to be applied may include, but is not limited to percent Total Solids, pH, Ammonia, Nitrates, TKN, Total Phosphorus, Potassium, Calcium, Sodium, Magnesium, Toxicity test parameters, Cadmium, Chromium, Copper, Lead, Nickel, Zinc, Mercury, Arsenic, Selenium;
  - (F) information on the location, construction details, and primary usage (drinking water, process water, monitoring, etc.) of all wells within 500 feet of the application site;
  - (G) For sites previously permitted:  
Soil evaluation of the application sites by a soils scientist or an individual with at least three years experience in evaluation of soils for application of residuals to confirm or establish the soil map through field evaluation of soil texture; color; structure; the depth, thickness, and type of re-

restrictive horizons; the presence or absence of seasonal high water table within three vertical feet of the surface or subsurface application depth; pH; and cation exchange capacity;

(H) for sites not previously permitted:

(i) a USDA-SCS soils map of the application site. In addition, a soil evaluation of the application site by a Soils Scientist, or an individual with at least three years experience in evaluation of soils for application of residuals, which includes the soil evaluation and verification of the presence or absence of a seasonally high water table or bedrock within three vertical feet of the deepest point of residual application; pH; and cation exchange capacity;

(ii) if a USDA-SCS soils map of the application site is not available, soil evaluation of the disposal site by a soils scientist, or an individual with at least three years experience in evaluation of soils for application of residuals down to a depth of seven feet or the "C" horizon, whichever is less, to develop a soil map through field evaluation of soil texture; color; the depth, thickness, and type of restrictive horizons; the presence or absence of a seasonal high water table, or bedrock within three vertical feet of the deepest point of residual application; and cation exchange capacity.

(1) if Best Management Practices (BMPs) are developed for a specific residual and approved by the Director, they may be submitted as part of the application package. Depending on the material and the detail of the BMP, some of the information contained in Subparagraphs (d)(11)(A)-(H) of this Rule may not be required to be submitted as part of the application. Any item listed in Subparagraphs (d)(11)(A)-(H) that is not submitted as part of the application must be specifically addressed in the BMP. Each application will be evaluation individually and the Director reserves the right to determine that a specific residual has characteristics that do not allow it to be covered by all or part of a BMP.

(12) for Disposal and/or Treatment of Soils Containing Petroleum Product by Landfarming or Storage and Treatment in Containment Structures:

(A) for all applications:

(i) a complete chemical analysis of the typical petroleum contaminated soil to be remediated, including but not limited to, total petroleum hydrocarbons (TPH), semivolatile and volatile hydrocarbons (per U.S. EPA methods 8240 and 8270), pH, and heavy metals,

(ii) a determination of hazardous waste constituents using the Toxicity Characteristic Leaching Procedure (TCLP) described in 40 CFR 261.24. Any substance shall be considered a hazardous waste if the results of the TCLP analysis indicates concentrations of constituents greater than the federal regulatory level, unless documentation is provided stating that the petroleum contaminated soil is not a hazardous waste regulated under Subtitles C or D of RCRA. A TCLP analysis will be required for all permit applications to dispose of petroleum contaminated soil in accordance with the following criteria:

(I) if the source of the soil contamination is a virgin (unused) petroleum product, from an underground storage tank regulated under Subtitle I of RCRA, the contaminated soil shall not be considered a hazardous waste and no TCLP analysis is required. In lieu of the TCLP analysis certification of soil contamination from a virgin petroleum product will be required,

(II) if an analysis of the source of petroleum product is submitted showing concentrations less than the regulatory level associated with the constituents of the TCLP analysis (Table II.2 of the Federal Register, Volume 55, No. 61), the contaminated soil shall not be considered a hazardous waste and no TCLP analysis will be required,

(III) for soils contaminated with used motor oil, the soils will be considered hazardous until proven otherwise by a TCLP analysis for metals only (EPA Hazardous Waste Nos. D004-D011),

(IV) for soils contaminated by waste oil, a TCLP analysis for all constituents in Table II.2 of the Federal Register, Volume 55, No. 61, with the exception of pesticides and herbicides, shall be required,

(V) for soils contaminated with petroleum products not regulated under Subtitle I of RCRA (excluding used motor and waste oils), the soils will be considered hazardous until proven otherwise by procedures specified by the Department.

(iii) a scaled map of the site, with a horizontal scale of one inch equals 100 feet or less and topographic contour intervals not exceeding 10 feet or 25 percent of total site relief, whichever is less and showing:

(I) all property boundaries and all structures within the property boundary,

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- (II) the location of all wells, springs, lakes, ponds, or other surface drainage features within 500 feet of the waste disposal site; and
- (III) any residences within 400 feet of the waste disposal site.
- (iv) confirmation that an erosion control plan has been submitted to the Division of Land Quality or its delegation, for disposal sites encompassing more than one (new law) acre,
- (v) an indication of cover crop(s),
- (vi) the volume of petroleum contaminated soil to be remediated,
- (vii) landowners agreement to allow the use of the property for the purpose of remediating petroleum contaminated soil. Not required when the permit applicant is the sole landowner,
- (B) for Soil Remediation at Minimum Rates:
  - (i) a calculation of the area required for landfarming using the maximum application thickness of one inch,
  - (ii) an indication of cover crop(s),
- (C) for Soil Remediation at Conventional Rates (dedicated or non-dedicated sites):
  - (i) a soils evaluation report of the disposal area, conducted by a soils scientist, to adequately evaluate the soil to a depth of five feet. The Report shall include, but is not limited to:
    - (I) field descriptions of texture, color, and structure,
    - (II) depth and thickness of soil horizons,
    - (III) presence of any restrictive horizons,
    - (IV) depth to seasonal high water table,
    - (V) soil pH and cation exchange capacity, and
    - (VI) estimates of liming and fertilization requirements,
  - (ii) the calculation of the size of the disposal area, thickness of application, and proposed cover crop,
  - (iii) a site maintenance plan,
  - (iv) the items listed in Subparagraph (d)(12)(A) of this Rule,
  - (v) proposed groundwater quality monitor well network (dedicated sites only),
- (D) Bioremediation and volatilization on impermeable surfaces:
  - (i) a soil evaluation of the disposal area conducted by a soils scientist to adequately evaluate the soil down to a depth of five feet to include but is not limited to, field descriptions of texture; color; and structure, depth and thickness of soil horizons, presence of any restrictive horizons, and depth to seasonal high water table,
  - (ii) the plans and specifications of the soil contaminant vessel and any associated leachate collection system, including the operating thickness of the soil to be contained and treated,
  - (iii) a description of the chemical or biological additives used in treating the contaminated soil,
- (E) containment and utilization at brick, asphalt, or other production facilities,
  - (i) a site management plan, consisting of a complete description of all operational procedures related to the handling of soils containing petroleum product at the proposed facility, including the following items:
    - (I) a description of the staging area(s) designated for initial receipts of the petroleum contaminated soils,
    - (II) the method of emplacement of the soils in the containment area(s),
    - (III) the average residence time of the soils in the containment area,
    - (IV) the method of incorporation of the soils into the production facilities product materials,
    - (V) the method of containment and disposal of any leachate or runoff resulting from the containment and storage of petroleum contaminated soils,
  - (ii) the items listed in Subparagraph (d)(12)(A) of this Rule,
- (F) for Soil Remediation Using Mobile or Portable Self-Contained Facilities:
  - (i) a description of the treatment system to include procedures for controlling any vapors, liquid or solid by-products of the treatment process,
  - (ii) the method by which any by-products will be disposed,
  - (iii) the predicted average concentration of petroleum contaminants in the untreated soil, as determined by sampling procedures and analytical methods approved by the Department,
  - (iv) the sampling procedures and analytical methods by which the concentration(s) and type(s) of contaminants in the treated soil will be determined,
  - (v) the method of disposal of the treated soil,
- (13) Pump and Haul Permits:

- (A) Pump and Haul Permits are not acceptable long term domestic wastewater treatment alternatives. Permits will only be issued to facilities under the authority of the Division of Environmental Management in cases of environmental emergencies, nuisance conditions, health problems and/or other unique situations. These permits will only be issued for a period of no more than six months unless the Director determines that conditions are such that the final waste management options can not be implemented within six months.
- (B) Pump and Haul Permits for nondomestic wastewater will be considered on a case by case basis and will only be issued in cases when it can be demonstrated to the satisfaction of the Director that no other environmentally superior alternative is reasonably available.

Statutory Authority G.S. 143-215.1; 143-215.3(a); 143-215.3B(b).

#### .0206 SUBMISSION OF PERMIT APPLICATIONS

(a) Permit applications, supporting information, and processing fee for permits issued by the Division shall be filed with the Director, Division of Environmental Management, Department of Natural Resources and Community Development, Post Office Box 27687, Raleigh, North Carolina, 27611. Environment, Health, and Natural Resources, Post Office Box 29535, Raleigh, North Carolina 27626-0535. Applications for soil remediation projects, on other than dedicated sites, should be submitted to the appropriate DEM regional office. Applications for permits from local sewer system programs shall be submitted directly to the local program director. The Division shall not require permit processing fees for permits issued by local sewer system programs.

(b) Permit applications shall be signed as follows:

- (1) in the case of corporations, by a principal executive officer of at least the level of vice-president, or his duly authorized representative;
- (2) in the case of a partnership, by a general partner and in the case of a limited partnership, by a general partner;
- (3) in the case of a sole proprietorship, by the proprietor;
- (4) in the case of a municipal, state, or other public entity by either a principal executive officer, ranking elected official or other duly authorized employee.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.1.

#### .0208 STAFF REVIEW AND PERMIT PREPARATION

(a) The staff of the permitting agency shall conduct a review of plans, specifications and other project data accompanying the application and shall determine if the application and required information are complete. The staff shall acknowledge receipt of a complete application.

The local government unit or units having jurisdiction over specific residential projects shall be notified of permit applications in accordance with N.C.G.S. 143-215.1 (d1).

(b) If the application is not complete with all required information, the application will be returned to the applicant. The staff shall advise the applicant by mail:

- (1) how the application or accompanying supporting information may be modified to make them acceptable or complete;
- (2) that the 90 day processing period required in G.S. 143-215.1 and Rule .0209 of this Section begins upon receipt of corrected or complete application with required supporting information.
- (3) ~~that, if complete plans with all required information are not resubmitted within 60 days, the application packet will be returned to the applicant as "incomplete".~~

(c) Pursuant to G.S. 143-215.67(a), the staff of the Division shall determine for sewer system construction or sewer system extensions, whether the treatment works or the sewer system to which the proposed system will discharge is adequate to receive waste which will be discharged from the proposed system.

(d) For treatment works and disposal systems, the staff shall make a site-specific evaluation to determine the potential impacts of the proposed project on surface and ground water quality.

(e) If an application is accepted and later found to be incomplete, the applicant will be advised how the application or accompanying supporting information may be modified to make them acceptable or complete, and that if all required information is not submitted within 30 days that the project will be returned as incomplete.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.1(b); 143-215.1(d); 143-215.3(a)(4).

#### .0209 FINAL ACTION ON PERMIT APPLICATIONS TO THE DIVISION

(a) The Director shall take final action on all applications not later than 90 days following re-

ceipt of a complete application and with required information. All permits or renewals of permits and decisions denying permits or renewals shall be in writing.

(b) The Director is authorized to:

- (1) issue a permit containing such conditions as are necessary to effectuate the purposes of Article 21, Chapter 143, N.C. General Statutes;
- (2) issue permit containing time schedules for achieving compliance with applicable effluent standards and limitations, water quality standards and other legally applicable requirements;
- (3) deny a permit application where necessary to effectuate:
  - (A) the purposes of Article 21, Chapter 143;
  - (B) the purposes of N.C.G.S. 143-215.67(a);
  - (C) rules on coastal waste treatment, disposal, found in Section .0400 of this Subchapter;
  - (D) rules on "subsurface disposal systems," found in Section .0300 of this Subchapter, 15A NCAC 18A .1900 as amended through August 1, 1991 or any later adopted amendments or additions. Copies are available from the Division of Environmental Health, P.O. Box 29535, Raleigh, North Carolina 27626-0535.
  - (E) rules on groundwater quality standards found in Subchapter 2L of this Chapter.
- (4) hold public meetings when necessary to obtain additional information needed to complete the review of the application. The application will be considered as incomplete until the close of the meeting record.

(c) If a permit is denied, the letter of denial shall state the reason(s) for denial and any reasonable measures which the applicant may take to make the application approvable.

~~(d) The Director shall submit to the commission at its regular meetings a report which contains the action taken with respect to any permit application since the last commission meeting.~~

~~(d) (e)~~ Permits shall be issued or renewed for a period of time deemed reasonable by the Director.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.1(a); 143-215.1(b); 143-215.1(d).*

#### **.0211 PERMIT RENEWALS**

Requests for permit renewals are to be submitted to the Director at least 180 days prior to expiration unless revoked in accordance with Rule

.0213 of this Section. Such requests must be submitted with a processing fee as shown in Rule .0205(c)(5) of this Section, in the form of a check or money order made payable to the N.C. Department of Environment, Health, and Natural Resources. Renewal requests received less than 180 days prior to permit expiration will be required to pay the new application/modification/late renewal fee rather than the timely renewal without modification fee. All applications are incomplete until required processing fees are received, and may be returned to the applicant. The processing fee shall not apply to any farmer who submits an application which pertains to his farming operation.

*Statutory Authority G.S. 143-215.3(a).*

#### **.0213 MODIFICATION AND REVOCATION OF PERMITS**

Any permit issued by the Division pursuant to these Rules is subject to revocation, or modification upon 60 days notice by the Director in whole or part for good cause including but not limited to:

- (1) violation of any terms or conditions of the permit;
- (2) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;
- (3) refusal of the permittee to allow authorized employees of the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources upon presentation of credentials:
  - (a) to enter upon permittee's premises on which a system is located in which any records are required to be kept under terms and conditions of the permit;
  - (b) to have access to any copy and records required to be kept under terms and conditions of the permit;
  - (c) to inspect any monitoring equipment or method required in the permit; or
  - (d) to sample any discharge of pollutants.
- (4) failure to pay the annual fee for administering and compliance monitoring.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.1(b)(2).*

#### **.0215 DELEGATION OF AUTHORITY**

For permits issued by the Division, the Director is authorized to delegate any or all of the functions contained in these Rules except the following:

- (1) denial of a permit application;
- (2) revocation of a permit not requested by the permittee;

- (3) modification of a permit not requested by the permittee.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4).

**.0217 PERMITTING BY REGULATION**

(a) The following nondischarge facilities are deemed to be permitted pursuant to G.S. 143-215.1(d) and it shall not be necessary for the Division to issue separate permits for these facilities:

- (1) (a) ~~Treatment~~ New and expanded treatment works and disposal disposal utilization systems which serve facilities raising and feeding animals and do not discharge to surface waters are deemed to be permitted pursuant to G.S. 143-215.1(d) for animal waste from a feedlot serving more than or equal to one hundred animal units and which are designed, constructed, operated and maintained to meet the standards and specifications of the U.S. Department of Agriculture - Soil Conservation Service in Section IV of the Field Office Technical Guide or best management practices adopted by the Soil and Water Conservation Commission. For new and expanded facilities, a buffer (separation) zone of at least 100 feet from surface waters and drainage systems shall be maintained for:

- (A) constructed facilities such as lagoons, ponds and storage structures;  
 (B) the land application of animal waste; and  
 (C) areas where a vegetative cover cannot be maintained because of the concentration of animals, with the exception of stream crossings.

The buffer for the land application of animal wastes may be reduced to no less than 25 feet if the buffer is comprised of established vegetation and the method of land application and the slope of the site are such as not to allow run-off or drift from the site during application. The buffer for the land application of animal wastes may be reduced to less than 25 feet if other equivalent controls are approved by the Soil and Water Conservation Commission. These animal concentration areas and existing animal waste lagoons, ponds and storage structures which are to be enlarged will be exempt from the minimum separation requirement if it can be documented that no practicable alternative exists to meet the

requirement. In addition to the requirements in this Paragraph, new and expanded facilities must also obtain an approved animal waste management plan before animals are stocked.

- (2) Nondischarging treatment works and disposal/utilization systems for animal waste from feedlots serving more than or equal to 50 animal units which are operational on the effective date of these Rules will continue to be deemed to be permitted, as built, if the land owner submits a registration of the facility to the Division, on forms supplied by the Division, on or before July 31, 1993. After December 31, 1997 facilities serving more than or equal to 100 animal units will only be deemed to be permitted if they can meet the same operating and maintenance criteria as for new and expanded facilities. These facilities must also obtain an approved animal waste management plan by December 31, 1997. If this criteria cannot be met, the facility must apply for and receive an individual nondischarge permit from the Division.
- (3) Nondischarging facilities serving less than 100 animal units are deemed permitted but will be encouraged to follow best management practices for water quality protection. Facilities that do not follow best management practices may be required to apply for and receive an individual permit if the facility is determined to have an adverse impact on water quality.
- (4) (b) Treatment works and disposal systems in the form of solid waste disposal sites and composting facilities approved in accordance with the rules of the Commission for Health Services are deemed to be permitted pursuant to G.S. 143-215.1(d) if the Commission for Health Services has received the written concurrence of the Director. It shall not be necessary for the Commission or the Division to issue another permit for such works or systems. The term solid waste is used as defined in G.S. 130A-290 and includes hazardous waste.
- (5) Any building sewer documented by the local building inspector to be in compliance with the N.C. State Plumbing Code.
- (6) Sites permitted under the authority of the Commission for Health Services for the disposal utilization of residuals septage.
- (7) Individual land application sites receiving compost and chemically stabilized resi-

duals that are demonstrated as being nonhazardous and nontoxic, meet EPA's criteria for PFRP, are registered by the North Carolina Department of Agriculture as a commercial fertilizer/soil amendment, are utilized at agronomic rates and are sold and used exclusively in bag form. No distinction will be made as to whether the material is bagged in North Carolina or shipped into the state already bagged.

- (8) Storage sites for petroleum contaminated soils that are utilized for less than 45 days, storage is on 10 mil or thicker plastic, provisions are made for containing potential leachate and runoff and approval of the activity has been receiving from the appropriate DEM Regional Supervisor or his designee.
- (9) Land application sites for petroleum contaminated soils with volumes of soil from each source of less than or equal to 50 cubic yards and approval of the activity has been received from the appropriate DEM Regional Supervisor or his designee.
- (10) Swimming Pool filter backwash and pool drainage that is discharged to the land surface or subsurface (excluding the use of injection wells).
- (11) Drilling muds, cuttings and well water from the development of wells, upon approval by the appropriate DEM Regional Office.
- (12) Composting facilities for dead poultry, if the facilities are constructed and operated in accordance with guidelines approved by the North Carolina Department of Agriculture, are constructed on an impervious, weight-bearing foundation, operated under a roof and are approved by the State Veterinarian.
- (13) Operations that involve routine maintenance and/or the rehabilitation of existing sewer lines. In situations where existing sewer lines are undergoing routine maintenance, the existing sewer lines are being rehabilitated by constructing or installing replacement sewers, or the existing sewer lines are being refurbished by the installation of some type of sealant or sleeve inside the existing sewer line, a specific nondischarge permit is not required. These operations will be deemed to be permitted as long as all construction and installation conforms to the design criteria of the Division pursuant to Rule .0219 of this Section, as long as new sources of

wastewater flow are not being connected to the rehabilitated sewers, and as long as all replacements or newly constructed sewers are located in the same proximity (same general horizontal and vertical alignment) as the existing sewers. If any of the criteria in this Paragraph are not be adhered to, a site specific permit must be requested by the applicant. Additionally, once the maintenance and/or rehabilitation activities are completed, a North Carolina Professional Engineer's certification (form provided by the Division) must be submitted to the appropriate Regional Supervisor for the completed work.

(b) The Director however may on a case by case basis determine that a facility or a class of facilities should not be deemed to be permitted in accordance with this Rule and be required to obtain individual nondischarge permits. This determination will be made based on existing or projected environmental impacts and/or nuisances conditions.

(c) Failure to register or obtain approval of a management plan as required by the dates specified in Paragraph (a)(1) and (2) of this Rule or failure to follow best management practices may result in the facility being required to apply for and receive an individual nondischarge permit and an appropriate enforcement action being initiated. Penalties assessed may be based on any one or a combination of the factors as established in N.C.G.S. 143B-282.1(b).

(d) The Secretary of Environment, Health, and Natural Resources is delegated the authority to assess fines and penalties for the willful discharge of animal waste from animal or poultry feeding operations pursuant to N.C. General Statutes 143-215(e).

(e) ~~(e)~~ Nothing in this policy Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standards, and in addition any such violation shall be considered a violation of a condition of a permit. Further, nothing in this policy Rule shall be deemed to apply to or permit activities for which a state/NPDES permit is otherwise required. The term NPDES means National Pollutant Discharge Elimination System.

*Statutory Authority G.S. 130A-300; 143-215.1(a)(1); 143-215.3(a),(d).*

#### .0218 LOCAL PROGRAMS FOR SEWER SYSTEMS

(a) Jurisdiction. Municipalities, counties, local boards or commissions, water and sewer authorities, or groups of municipalities and counties

may apply to the Commission for approval of programs for permitting construction, modification, and operation of public and private sewer systems in their utility service areas. Permits issued by approved local programs serve in place of permits issued by the Division.

(b) Applications. Applications for approval of local sewer system programs must provide adequate information to assure compliance with the requirements of G.S. 143-215.1(f) and the following requirements:

- (1) Applications for local sewer system programs shall be submitted to the Director, Division of Environmental Management, Department of ~~Natural Resources and Community Development~~, Post Office Box 27687, Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611.
- (2) The program application shall include copies of permit application forms, permit forms, minimum design criteria, and other relevant documents to be used in administering the local program.
- (3) An attorney representing the local unit of government submitting the application must certify that the local authorities for processing permit applications, setting permit requirements, enforcement, and penalties are compatible with those for permits issued by the Division.
- (4) If the treatment and disposal system receiving the waste is under the jurisdiction of another local unit of government, then the program application must contain a written statement from that local unit of government that the proposed program complies with all its requirements and that the applicant has entered into a satisfactory contract which assures continued compliance.
- (5) Any future amendments to the requirements of this Section shall be incorporated into the local sewer system program within 60 days of the effective date of the amendments.
- (6) A professional engineer licensed to practice in this state shall be on the staff of the local sewer system program or retained as a consultant to review unusual situations or designs and to answer questions that arise in the review of proposed projects.
- (7) Each project permitted by the local sewer system program shall be inspected for compliance with the requirements of the local program at least once during construction.

- (8) A copy of ~~the permit and plans~~ for each permit issued by the local sewer system program shall be sent to the regional office of the Division and another copy sent to the central office of the Division in Raleigh. Copies of the approved plans must also be submitted upon request by the Division.

- (9) ~~A quarterly~~ semi-annual report shall be submitted to the Director with a copy to the appropriate DEM Regional Office listing for each local permit issued during the quarter, the name of the person receiving the permit, the permit number, the treatment plant receiving the waste, and the design flow and the type of waste for sewer system extensions or changes. The report shall also provide a listing and summary of all enforcement actions taken or pending during the quarter. The quarters begin on January 1, April 1, July 1, and October 1, and the report shall be submitted within 30 days after the end of each period.

(c) Approval of Local Programs. The staff of the Division shall acknowledge in writing receipt of an application for a local sewer system program, review the application, notify the applicant of additional information that may be required, and make a recommendation to the Commission on the acceptability of the proposed local program. Final action on the proposed local program shall be made by the Commission within 180 days of receiving a complete application.

(d) Adequacy of Receiving Facilities. Local sewer system programs shall not issue a permit for a sewer project which would increase the flow or change the characteristics of waste to a treatment works or sewer system unless the local program has received a written determination from the Division that, pursuant to G.S. 143-215.67(a), the treatment works or sewer system is adequate to receive the waste. The Division staff may, when appropriate, provide one written determination that covers all local permits for domestic sewage sewer projects with total increased flow to a particular treatment works less than a specified amount and which are issued within a specified period of time not to exceed 60 days. In no case shall the local sewer system program issue a permit for additional wastewater if the receiving wastewater treatment is in noncompliance with its division issued permit unless the additional flow is allowed as part of a special order or judicial order.

(e) Modification of a Local Program. After a local sewer system program has been approved by the Commission, any modification of the

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program procedures or requirements specified in Paragraph (a) of this Rule must be approved by the Commission to assure that the procedures and requirements remain at least as stringent as the state-wide requirements of the Commission.

(f) Appeal of Local Decisions. Appeal of individual permit denials or issuance with conditions the permit applicant finds unacceptable shall be made to the local program authority or to an appropriate judicial level. The Commission will not consider individual permit denials or issuance with conditions to which the permittee objects. This Paragraph does not alter the enforcement authority of the commission as specified in G.S. 143-215.1(f).

(g) The Division shall maintain a list of all local units of government with approved local sewer system programs and make copies of the list available to the public upon request and payment of any reasonable costs for reproduction. The list can be obtained from: Permitting and Engineering Unit Supervisor, Division of Environmental Management, Water Quality Section, P.O. Box ~~27687~~, 29535, Raleigh, North Carolina ~~27611~~, 27626-0535.

Statutory Authority G.S. 143-215.1;  
143-215.3(a)(1).

### .0219 MINIMUM DESIGN REQUIREMENTS

(a) All facilities requiring a permit pursuant to this Section shall be designed following good engineering practice and shall not result in nuisance conditions. The plans and specifications for all projects must be sealed by a Professional Engineer. The only exceptions from the Professional Engineer requirement are those allowed in Rule .0205(d)(1)(A)(iii), of this Section.

(b) Waste, including treated waste, shall not be placed directly into, or in contact with, GA classified groundwater unless such placement will not result in a contravention of GA groundwater standards, as demonstrated by predictive calculations or modeling methods acceptable to the Director.

(c) Impoundments, trenches or other excavations made for the purpose of storing or treating waste will not be excavated into bedrock unless the placement of waste into such excavations will not result in a contravention of assigned standards, as demonstrated by predictive calculations or modeling methods acceptable to the Director.

(d) The bottoms of earthen impoundments, trenches or other similar excavations with the exception of nitrification fields, infiltration systems, and sewer line excavations shall be at least four feet above the bedrock surface, except that the bottom of excavations which are less than four feet above bedrock shall have a liner with a hydraulic conductivity no greater than  $1 \times 10^{-7}$  centimeters per second. Liner thickness will be that thickness necessary to achieve a leakage rate consistent with the sensitivity of classified groundwaters. Separation distances or liner requirements may be reduced if it can be demonstrated by predictive calculations or modeling methods acceptable to the Director, that construction and use of these treatment and disposal units will not result in contravention of assigned standards.

(e) ~~Industrial waste~~ Waste shall not be applied or discharged onto or below the land surface when the vertical separation between the waste and the seasonal high water table is less than one foot. If the area is to be utilized for industrial waste and has a separation of less than three feet, and in other areas as designated by the Director, a demonstration must be made using predictive calculations or modeling methods, acceptable to the Director, that such placement will not result in contravention of classified groundwater standards.

(f) Treatment works and disposal systems utilizing earthen basins, lagoons, ponds or trenches, excluding nitrification fields, infiltration systems, and holding ponds containing non-industrial treated effluent prior to spray irrigation, for treatment, storage or disposal shall have either a liner of natural material at least one foot in thickness and having a hydraulic conductivity of no greater than  $1 \times 10^{-6}$  centimeters per second when compacted, or a synthetic liner of sufficient thickness to exhibit structural integrity and an effective hydraulic conductivity no greater than that of the natural material liner.

(g) Except as otherwise provided by these requirements or by terms of a permit, all waste treatment, storage and disposal facilities must maintain and operate a groundwater monitoring system as approved by the Division. The monitoring system must be designed to assess the impact of any discharge on the quality of the underlying groundwaters and must be based on the results of the hydrogeologic investigation.

(h) For pumping stations:

- (1) no by-pass or overflow lines;
- (2) multiple pumps shall be provided capable of pumping at a rate of 2.5 times the average daily flow rate with any one pump out of service. Pump-on/Pump-off elevations shall be set such that 2-8 pumping cycles per hour may be achieved in the pump station at average flow. If ex-

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- tended detention times are necessary due to phased development, the need for odor and corrosion control must be evaluated by the applicant;
- (3) ~~where waters classified as WS, SA, B or SB could be impacted by a power failure~~, at least one of the following shall be required:
- (A) dual source or standby power supply on site or;
  - (B) telemetry systems with sufficient numbers of standby generators and personnel for distribution or;
  - (C) approval by the Director that the pump station:
    - (i) serves a private water distribution system which has automatic shut-off at power failure and no elevated water storage tanks, and
    - (ii) has sufficient storage capacity that no potential for overflow exists, and
    - (iii) is connected to facilities that can tolerate septic wastewater due to prolonged detention;
  - (D) where the waters that would be impacted by a power failure are classified as C, the applicant may be allowed to show a history of power reliability that would demonstrate that an alternative power source or other reliability measures would not be needed.
- (4) ~~The need for screened vents must be evaluated~~ for all wet wells;
- (5) high water audio and visual alarms;
- (6) protection from a 100 year flood;
- (7) restricted access to the site and equipment;
- (8) all-weather roadway to the site;
- (i) For sewer systems and sewer system extensions:
- (1) All building drains and building sewers which are approved by the local building inspector in accordance with the North Carolina Building Code are deemed to be permitted by the Environmental Management Commission;
  - (2) All sewers shall be designed based upon at least minimum standards which include:
    - (A) wastewater flow rate at design loading should result in the sewer flowing approximately half full. The sewer must also be evaluated as to its ability to carry peak loadings;
    - (B) a velocity of two feet per second;
    - (C) construction and operation shall not result in water pollution;
    - (D) infiltration rate limited to ~~200~~ 100 gallons per day per inch of pipe diameter per mile of pipe;
    - (E) construction and operation consistent with all applicable local ordinances;
    - (F) for ~~public~~ sewers, a minimum eight inch diameter pipe;
    - (G) minimum separations:

(i) Storm sewers (vertical)	12 inches
(ii) Water mains (vertical-water over sewer)	18 inches
or	
(horizontal)	10 feet
(iii) In benched trenches (vertical)	18 inches
(iv) Any private or public water supply source, including any WS-I waters or Class I or Class II impounded reservoirs used as a source of drinking water	100 feet
(v) Waters classified <del>WS-I</del> , WS-II, WS-III, B, SA, <u>ORW</u> , <u>IIQW</u> , or SB [from normal high water (or tide elevation)]	50 feet
(vi) Any other stream, lake or impoundment	10 feet
(vii) Any building foundation	5 feet
(viii) Any basement	10 feet
(ix) Top slope of embankment or cuts of 2 feet or more vertical height	10 feet
(x) Drainage systems	
(I) Interceptor drains	5 feet
(II) Ground water lowering and surface drainage ditches	10 feet
(xi) Any swimming pool	10 feet
(xii) Ferrous sewer pipe with joints equivalent to water main standards, shall be used where these minimum separations cannot be maintained. The minimum separation shall however not be less than 25 feet from a private well or 50 ft from a public water supply well.	

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- (H) three feet minimum cover shall be provided for all sewers unless ferrous material pipe is specified. Ferrous material pipe or other pipe with proper bedding to develop design supporting strength shall be provided where sewers are subject to traffic bearing loads;
- (I) the maximum separation between manholes shall be 425 feet unless written documentation is submitted with the application that the owner/authority has the capability to perform routine cleaning and maintenance on the sewer at the specified manhole separation;
- (J) drop manholes shall be provided where invert separations exceed 2.5 feet;
- (K) manholes shall be designed for 100-year flood protection;
- (L) ~~the need for an~~ air relief ~~valves~~ valve shall be ~~evaluated~~ provided at all high points along force mains;
- (M) odor and corrosion control must be ~~evaluated~~ satisfactorily addressed by the applicant for all sewers and force mains with extended travel times.
- (j) For treatment works and disposal systems:
- (1) no by-pass or overflow lines;
  - (2) multiple pumps if pumps are used;
  - (3) ~~where waters classified as WS-I, WS-II, WS-III, B, SA, or SB could be impacted by a power failure,~~ at least one of the following:
    - (A) dual source/dual feed or automatically activated standby power supply on site, capable of powering all essential treatment components under design conditions or,
    - (B) approval by the Director that the facility:
      - (i) serves a private water distribution system which has automatic shut-off at power failure and no elevated water storage tanks, and
      - (ii) has sufficient storage capacity that no potential for overflow exists, and
      - (iii) can tolerate septic wastewater due to prolonged detention or
    - (C) where the waters that would be impacted by a power failure are classified as C Waters, the applicant may be allowed to show a history of power reliability that would demonstrate that an alternative power source or other reliability measures would not be needed.
  - (4) protection from 100 year flood;
  - (5) buffer zones of at least the following distances, and greater where necessary to comply with Section 2H .0400 of this Subchapter or to address particular site or waste characteristics:
    - (A) Any habitable residence or place of public assembly under separate ownership or which ~~are~~ is to be sold:
      - (i) for spray irrigation systems (application area)  
not covered by 2H .0219(k) 400 feet
      - (ii) for surface ~~sludge~~ residual application 400 feet
      - (iii) for subsurface ~~sludge~~ residual injection 200 feet
      - (iv) for facultative lagoons 400 feet
      - (v) for activated sludge plants or surface sand filters 100 200 feet
      - (vi) for soil remediation sites 100 feet
    - (B) Any private or public water supply source 100 feet
    - (C) Streams classified as ~~WS-I, WS-II, WS-III~~ or B:
      - (i) for subsurface disposal 50 feet
      - (ii) for non-discharge surface disposal except for high rate infiltration systems 100 feet
      - (iii) high rate infiltration systems 200 feet
    - (D) Waters classified SA or SB:
      - (i) all systems except for high rate infiltration systems 100 feet  
from ~~normal~~ mean high water
      - (ii) high rate infiltration systems 200 feet  
from mean high water
    - (E) Any other stream, canal, marsh, or coastal waters:
      - (i) for subsurface disposal 50 feet
      - (ii) for non-discharge surface disposal except for high rate infiltration systems 100 feet
      - (iii) high rate infiltration systems 200 feet

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(iv) <u>wastewater treatment facilities</u>		<u>50 feet</u>
(F) Any Class I or Class II impounded reservoir used as a source of drinking water:		
(i) <u>all systems except for high rate infiltration systems</u>		100 feet from normal high water
(ii) <u>high rate infiltration systems</u>		<u>200 feet</u> from normal high water
(G) Any other lake or impoundment:		
(i) for subsurface disposal		50 feet
(ii) for surface disposal <u>except for high rate infiltration systems</u>		100 feet
(iii) <u>high rate infiltration systems</u>		<u>200 feet</u>
(H) Any building foundation except treatment facilities:		
(i) for subsurface disposal		10 feet
(ii) for surface disposal		15 feet
(I) Any basement:		
(i) for subsurface disposal		15 feet
(ii) for surface disposal		15 feet
(J) Any property line:		
(i) for spray irrigation		150 feet
(ii) for other surface disposal systems	<del>100</del>	<u>50 feet</u>
(iii) for subsurface <del>sludge</del> residuals injection	<del>100</del>	<u>50 feet</u>
(iv) for other surface treatment systems	<del>50</del>	<u>100 feet</u>
(v) for other subsurface systems		50 feet
(vi) <u>for soil remediation sites</u>		<u>50 feet</u>
(K) Top of slope of embankments or cuts <del>of</del> <u>of</u> two feet or more in vertical height:		
(i) for systems other than rapid infiltration systems		15 feet
(ii) for rapid infiltration systems		100 feet
(L) Any water line from a disposal system		10 feet
(M) Drainage systems ( <u>Ditches, drains, surface water diversions, etc</u> ):		
(i) Interceptor drains and surface water diversions (upslope)		
(I) for subsurface disposal		10 feet
(II) for surface disposal other than spray irrigation systems and rapid infiltration systems	<del>40</del>	<u>50 feet</u>
(III) for spray irrigation systems		100 feet
(IV) for rapid infiltration systems		200 feet
(ii) Interceptor drains and surface water diversions (downslope)		
(I) for subsurface disposal	<del>25</del>	<u>50 feet</u>
(II) for surface disposal other than spray irrigation systems and rapid infiltration systems	<del>25</del>	<u>50 feet</u>
(III) for spray irrigation systems		100 feet
(IV) for rapid infiltration systems		200 feet
(iii) Groundwater lowering and surface drainage ditches		
(I) for subsurface disposal	<del>25</del>	<u>50 feet</u>
(II) for surface disposal other than spray irrigation and rapid infiltration systems	<del>25</del>	<u>50 feet</u>
(III) for spray irrigation systems		100 feet
(IV) for rapid infiltration systems		200 feet
(N) Any swimming pool:		
(i) for subsurface disposal		15 feet
(ii) for surface disposal		100 feet
(O) Any other nitrification field (except repair area)		20 feet
(P) Any well with the exception of an approved groundwater monitoring well		100 feet

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- (Q) Public right-of-way surface disposal 50 feet
- (R) The buffer distance for spray irrigation systems and land application systems other than high rate infiltration systems to surface waters and drainage systems listed in Paragraph (j)(5)(E) (G), and (M) of this Rule may be reduced to no less than 25 feet if the buffer is comprised of established grasses or naturally occurring uncultivated vegetation and the method of land application and the slope of the site are such as not to allow run-off or drift from the site during application;
- (6) adequate flow equalization for of at least 25 percent of the facilities permitted hydraulic capacity must be provided for all seasonal and/or resort facilities and all other facilities with fluctuations in influent flow which may adversely affect the performance of the system;
- (7) preparation of an operational management plan, including restricted access to the site and equipment, and, if appropriate, a crop management plan;
- (8) except for facilities for single family residences or as approved by the Director, appropriate monitoring wells designed to assess the impacts on the groundwater of any discharge and constructed in accordance with Section 2C .0100 of this Chapter;
- (9) a minimum of 30 days of residual holding must be provided.
- (k) For Land Application of Domestic Wastewater on Golf Courses and Other Public Access Areas:
- (1) Aerated flow equalization facilities with a capacity of at least 25 percent of the daily system design flow.
- (2) All essential treatment ~~and disposal~~ units shall be provided in duplicate.
- (3) The treatment process shall produce an effluent with a monthly average TSS of less than 5 mg/l and a daily maximum TSS of less than 10 mg/l and a maximum fecal coliform level of less than ~~4/100~~ 5/100 ml, prior to discharge to a five-day detention pond.
- (4) There must be no public access to the five-day detention pond.
- (5) The size of ~~the~~ any irrigation pond, that follows the five day holding pond, shall be justified using a mass water balance for worse case conditions of record.
- (6) An automatically activated standby power source or other means to prevent improperly treated wastewater from entering the five-day detention pond shall be provided.
- (7) Requirements for the lining of the five-day detention and irrigation ponds, which may include use of impervious natural materials, shall be site-specific.
- (8) In the design of the sprinkler system, ~~the piping shall be a separate system, with there shall be no direct~~ cross-connections to a potable water supply (includes no spigots on the distribution system).
- (9) The rate of application shall be site-specific. ~~but not exceeding 1 and 3/4 inches/week (as given in 2H .0401(g)(8)).~~
- (10) ~~The time of spraying shall occur between 11:00 p.m. and three hours prior to the daily opening of the course.~~
- (11) ~~(11)~~ There shall be a ~~400~~ 50 foot vegetative buffer zone between the edge of spray influence and the nearest dwelling.
- (12) ~~(12)~~ Signs shall be posted at the proshop stating that the course is irrigated with treated wastewater.
- (13) ~~(13)~~ There shall be a certified operator of a class equivalent to the class plant on call 24 hours/day.
- (l) Wastewater Flow Rates:
- (1) In determining the volume of sewage from dwelling units, the flow rate shall be 120 gallons per day per bedroom. The minimum volume of sewage from each dwelling unit shall be 240 gallons per day and each additional bedroom above two bedrooms will increase the volume by 120 gallons per day. Each bedroom or any other room or addition that can reasonably ~~be~~ be expected to function as a bedroom shall be considered a bedroom for design purposes. When the occupancy of a dwelling unit exceeds two persons per bedroom, the volume of sewage shall be determined by the maximum occupancy at a rate of 60 gallons per person per day.
- (2) The following table shall be used to determine the minimum allowable design daily flow of wastewater facilities. Design flow rates for establishments not identified below shall be determined using available flow data, water-using fixtures, occupancy or operation patterns, and other measured data.

Type of Establishments

Daily Flow  
For Design

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Airports, also RR Stations, bus terminals. (not including food service facilities)	5 gal/passenger
Barber Shops	50 gal/chair
Bars, Cocktail Lounges (not including food services)	20 gal/seat
Beauty Shops	125 gal/booth or bowl
Bowling Alleys	50 gal/lane
Businesses (other than those listed in this table)	25 gal/employee
Camps	
Construction or work camps	60 gal/person
Summer camps	60 gal/person
Camp grounds Without water and sewer hookups	100 gal/campsite
Travel trailer/recreational vehicle park with water and sewer hookup	120 gal/campsite
Churches (not including food service, day care and camps)	3 gal/seat
Country Clubs - Resident Members	60 gal/person
Nonresident Members	20 gal/person
Day Care Facilities	15 gal/person
Factories (exclusive of industrial wastes) -- per shift	25 gal/person
Add for showers -- per shift	10 gal/person
Food Service Facilities Restaurants (including fast food)	40 gal/seat or 40 gal/15 ft <sup>2</sup> of dining area, whichever is greater
24-hour Restaurants	50 gal/seat
Single-Service (exclusive of fast food)	25 gal/seat
Food Stands	
(1) Per 100 square feet of total floor space	50 gal
(2) Add per employee	25 gal
Hospitals	300 gal/bed
Laundries (self-service)	500 gal/machine
Marinas	10 gal/boat slip
With bathhouse	30 gal/boat slip
Meat Markets	
(1) Per 100 square feet of total floor space	50 gal
(2) Add per employee	25 gal
Motels/Hotel	120 gal/room
with cooking facilities in room	175 gal/room
Nursing/Rest Homes -- With laundry	120 gal/bed
Without laundry	60 gal/bed
Offices -- per shift	25 gal/person
Residential Care Facilities	60 gal/person
Resort (e.g. <u>condominiums</u> , <u>apartments</u> , <u>motels</u> , <u>hotels</u> )	200 gal/room
Restaurants	40 gal/seat or 40 gal/15 ft <sup>2</sup> of dining area (whichever is greater)
Schools	
Day Schools	
With cafeteria, gym, and showers	15 gal/student
With cafeteria only	12 gal/student
With neither cafeteria nor showers	10 gal/student
Boarding	60 gal/person
Service Stations	250 gal/water closet or urinal
Stadiums, Auditoriums, Theaters, Drive-ins	5 gal/seat or space

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Stores, shopping centers and malls -- Note: if  
food service is included, add 40 gal/seat  
Swimming Pools and Bathhouses

120 gal/1000 ft<sup>2</sup>  
10 gal/person

- (3) An adjusted daily sewage flow may be granted upon a showing that a sewage system is adequate to meet actual daily water consumption from a facility included in Subparagraph (1) or (2) of this Paragraph. Documented, representative data from that facility or a comparable facility shall be submitted, consisting of at least 12 consecutive monthly total water consumption readings and daily total water consumption readings for at least 30 consecutive days of water use. The daily readings shall be taken during a projected peak sewage flow month. The adjusted design daily sewage flow shall be determined by taking the numerical average of the daily readings that fall within the upper 10 percent of the daily readings when ranked in descending order.
- (m) For Treatment and Disposal of Soil Containing Petroleum Products:
- (1) Landfarming of Soils Containing Petroleum Products at Minimum Rates. Petroleum contaminated soils shall be incorporated into the native soils of the receiver site immediately upon application. Liming, fertilization, and aeration of the soils mixture shall be optional, unless otherwise required by the Division. Subsequent application of petroleum contaminated soils onto the same receiver site shall not occur for at least 18 months from the date of the most recent application of petroleum contaminated soils and shall cause the receiver site to be reclassified as a "dedicated remediation site" unless the permittee or applicant can demonstrate, through soil sampling and contaminant analytical procedures approved by the Department, that the petroleum contaminant level in the upper eight inches of the receiver site soils is below analytical detection levels;
- (2) Landfarming of Soil Containing Petroleum Products at Conventional Rates. Landfarming of soils containing petroleum product at an application thickness greater than one inch shall require fertilization, liming, and aeration of the native soils and petroleum contaminated soils mixture as approved by the Division. Application thickness shall be based upon the nature of the receiver site soils, depth to the seasonal high water table, the intended cover crop, and the source of contamination, in accordance with procedures approved by the Division. Operation of the landfarming program shall not result in contravention of classified groundwater or surface water quality standards. Subsequent application of petroleum contaminated soils onto the same receiver site shall not occur for at least 18 months from the date of the most recent application of petroleum contaminated soils and shall cause the receiver site to be reclassified as a "dedicated disposal site" unless the permittee or applicant can demonstrate, through soil sampling and contaminant analytical procedures approved by the Department, that the petroleum contaminant level in the upper eight inches of the receiver site soils is below analytical detection levels;
- (3) Containment and Treatment of Soil Containing Petroleum Products:
- (A) A containment structure designed to bioremediate or volatilize soil containing petroleum products shall be constructed of either a synthetic liner of at least 30 mils thickness or of a one foot thick liner of natural material, compacted to at least 95 percent standard proctor dry density and with a permeability of less than  $1 \times 10^{-7}$  cm/sec.
- (B) The bottom of the containment structure shall be at least three feet above the seasonal high water table or bedrock.
- (C) A leachate collection system must be installed in order to prevent runoff from the petroleum contaminated soils within the containment structure, or steps taken to avoid accumulation of stormwater within the containment structure.
- (4) Disposal of Petroleum Contaminated Soils at Dedicated Sites. Subsequent applications of petroleum contaminated soils at dedicated sites shall not recur until such time as it can be demonstrated, by computer modeling or predictive calculations, that additional applications of contaminated soils will not result in the contravention of any applicable environmental standards. Disposal of petroleum contaminated soils at dedicated sites shall conform to procedures established by the Division.
- (n) For Systems Utilizing Infiltration Galleries:
- (1) An infiltration gallery shall be designed such that its largest surface dimension is greater than its depth and no vertical piping shall be installed within the trench.
- (2) An infiltration gallery shall be designed such that discharges from the infiltration gallery which reach the water table must be within the zone of influence of any on-site groundwater recovery system, and must not cause or contribute to the migration of contaminants into previously un-

contaminated areas. Predictive modeling shall be used to estimate the zone of influence, infiltration rate, groundwater movement and flow direction.

(o) ~~(m)~~ Additional requirements:

- (1) distance between water supply wells and waste facilities in accordance with Rule 2C .0107(a) of this Chapter or, if a greater area may be impacted, a distance in accordance with the perimeter of compliance described in ~~Rule 2L .0103(h)~~ Subchapter 2L of this Chapter;
- (2) compliance with the groundwater standards specified in Subchapter 2L of this Chapter;
- (3) where applicable compliance with rules on "coastal waste treatment disposal" found in Section .0400 of this Subchapter; and
- (4) For subsurface disposal systems, compliance with rules on subsurface disposal systems found in ~~Section .0300 of this Subchapter.~~ 15A NCAC 18A .1900 as amended through August 1, 1991 or any later adopted amendments or additions. Copies are available from the Division of Environmental Health, P.O. Box 29535, Raleigh, North Carolina 27626-0535.

(p) ~~(n)~~ Alternative Design Criteria may be approved by the Director. This approval will only be given in cases where the applicant can demonstrate that the Alternative Design Criteria will provide the following:

- (1) Equal or better treatment of the waste; and
- (2) Equal or better protection of the waters of the state; and
- (3) No increased potential for nuisance conditions.

Statutory Authority G.S. 143-215.1; 143-215.3(a)(1).

#### .0220 CERTIFICATION OF COMPLETION

Prior to the operation of any sewer system, treatment works or disposal system permitted for which an individual permit has been issued in accordance with this Section, a certification must be received by the permitting agency from a professional engineer certifying that the sewer system, treatment works or disposal system has been installed in accordance with the approved plans and specifications. For facilities with phased construction or where there is a need to operate certain equipment under actual operating conditions prior to certification, additional certification may be needed as follow-ups to the initial, pre-operation, certification.

Statutory Authority G.S. 143-215.1.

#### .0222 THE WASTEWATER TREATMENT WORKS EMERGENCY FUND

(a) In cases in which water quality standards are violated or an environmental health threat exists, monies from the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund may be used at the discretion of the Director to correct the cause of such conditions.

(b) In this, the Director shall:

- (1) Ensure the fiscal integrity of the fund;
- (2) Use the fund only as a measure of last resort to protect water quality or public health when all other compliance and enforcement procedures have failed;
- (3) Limit the use of the fund to wastewater treatment works with design flow capacities of less than or equal to one hundred thousand gallons per day (100,000 GPD);

- (4) Notify the permittee by certified mail of the intention to take emergency corrective action and to recoup monies spent;
- (5) Make every effort to recoup fund expenditures, including collection costs, from the parties responsible; and
- (6) Coordinate use of the fund with the program of the Public Utilities Commission when a permittee is also a regulated utility. and
- (7) ~~Provide a quarterly accounting of the fund to the Commission.~~

Statutory Authority G.S. 143-215.3(a); 143-215.3B(c); 143-215.3B(e).

#### .0223 DEMONSTRATION OF FUTURE WASTEWATER TREATMENT CAPACITIES

In order to insure that treatment systems do not exceed their hydraulic treatment capacities, no permits for sewer line extensions will be issued to wastewater treatment systems owned and/or operated by municipalities, counties, sanitary districts or public utilities unless they meet the following requirements:

- (1) Prior to exceeding 80 percent of the wastewater treatment system's permitted hydraulic capacity (based on the average of the previous two months), the permittee must submit an approvable engineering evaluation of their future wastewater treatment needs. This evaluation must outline specific plans for system expansion including the source(s) of funding for the expansion. If expansion is not proposed, a detailed jus-

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tification must be made based on past growth records and future growth projections and/or on specific plans for the removal of infiltration/inflow.

(2) Prior to exceeding 90 percent of the wastewater treatment systems permitted hydraulic capacity, (based on the average of the previous two months) the permittee must submit approvable final plans and specifications for expansion of the wastewater treatment system including a construction schedule. If expansion is still not proposed, a detailed justification must be made based on past growth records and future growth projections and/or on specific plans for the removal of infiltration/inflow.

(3) The Director may on a case by case basis, until December 31, 1993, allow permits to be issued to facilities that are exceeding the 80 percent or 90 percent loading rates if the additional flow is not projected to result in the facility exceeding its permitted hydraulic capacity and it is demonstrated to his satisfaction that adequate progress is being made in developing the needed engineering evaluations or plans and specifications.

Statutory Authority G.S. 143-215.3.

### .0224 TREATMENT FACILITY OPERATION AND MAINTENANCE

(a) For facilities permitted under this Section, the permittee must designate an Operator in Responsible Charge and a back-up operator as required by the Water Pollution Control System Operators Certification Commission as established in 15A NCAC 8A .0202 as amended through May 1, 1991 or any later adopted amendments or editions of this Rule. Copies of this Rule are available from the Division of Environmental Management, Water Quality Section, Archdale Building, 512 N. Salisbury Street, P.O. Box 29535, Raleigh, North Carolina 27626-0535 at no charge.

(b) In order to insure the proper operation and maintenance of facilities permitted under this Section, the Operator in Responsible Charge, or a back-up operator when appropriate, must operate and visit the facility as required by the Water Pollution Control System Operators Certification Commission as established in 15A NCAC 8A .0202 as amended through May 1, 1991 or any later adopted amendments or editions of this Rule. Copies of this Rule are available from the Division of Environmental Management, Water Quality Section, Archdale

Building, 512 N. Salisbury Street, P.O. Box 29535, Raleigh, North Carolina 27626-0535 at no charge.

Statutory Authority G.S. 143-215.3.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the DEHNR - Division of Environmental Management intends to amend rule(s) cited as 15A NCAC 2H .1101, .1103, .1106 - .1110.

The proposed effective date of this action is November 2, 1992.

The public hearing will be conducted at the following times, dates and locations:

June 16, 1992

7:00 p.m.

Jenkins Fine Arts Center  
East Carolina University  
Greenville, N.C.

June 17, 1992

7:00 p.m.

Main Room  
Clinton Civic Center  
Clinton, N.C.

June 22, 1992

7:00 p.m.

Auditorium  
Carteret Community College  
Morehead City, N.C.

June 23, 1992

1:00 p.m.

Ground Floor Hearing Room  
Archdale Building  
Raleigh, N.C.

June 29, 1992

7:00 p.m.

Humanities Lecture Hall  
UNC - Asheville  
Asheville, N.C.

June 30, 1992

1:00 p.m.

Rotary Auditorium  
Mitchell Community College  
Statesville, N.C.

*Reasons for Proposed Actions:* To improve the Commission's biological laboratory certification rules by adding clarity to several provisions and including additional requirements for those found out of compliance with the rules.

*Comment Procedures:* All persons interested in this matter are invited to attend the hearings. Comments, statements, data and other information may be submitted in writing prior to, during or within 30 days after the hearings or may be presented orally at the hearings. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. For more information about the rules, contact Dennis Ramsey or Boyd DeVane, Division of Environmental Management, P.O. Box 29535, Raleigh, NC 27626-0535, (919) 733-5083. For copies of the rules, contact Linda Jones or Kay Stallings at the same number and address.

## CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

### SUBCHAPTER 2H - PROCEDURES FOR PERMITS: APPROVALS

#### SECTION .1100 - BIOLOGICAL LABORATORY CERTIFICATION

##### .1101 PURPOSE

These Rules set forth the requirements for certification of commercial, industrial, and public laboratories to perform biological toxicity testing and population ~~survey~~ surveys of water and wastewater as required for National Pollutant Discharge Elimination System (NPDES) permits by G.S. 143-215.3(a)(10) and Environmental Management Commission Rules for Classifications and Water Quality Standards Applicable to the Surface Waters of North Carolina, found in Subchapter 2B of this Chapter, Section .0200, and Rules for Surface Water Monitoring, Reporting, found in Subchapter 2B of this Chapter, Section .0500.

*Statutory Authority* G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66.

##### .1103 DEFINITIONS

The following terms as used in this Section shall have the assigned meaning:

- (1) Categories are groups of parameters which differ by measured test exposure regimes (chronic and acute) and, in the case of toxicological assay, through the presence or absence of vertebrae in the species of test

organisms used or being a member of the plant kingdom. All field population survey techniques are contained within one category.

- (2) Certification is a declaration by the Division that personnel, equipment, records, quality control procedures, and methodology cited by the applicant are accurate and that the applicants' proficiency has been considered and found acceptable.
- (3) Commercial Laboratory means any laboratory, including its employees and agents, which is seeking to analyze, analyzes, for others, wastewater samples for toxicity measurements or for their resultant impacts on the receiving waters.
- (4) Decertification is the loss of certification.
- (5) Director means the Director of the North Carolina Division of Environmental Management, or his successor.
- (6) Division means the North Carolina Division of Environmental Management, or its successor.
- (7) Evaluation samples are samples submitted by the State Laboratory to the commercial, municipal, industrial, or public laboratory as an unknown toxicant for measurement of toxicity or as an unknown set of preserved organisms for identification to specified levels of taxonomic classification.
- (8) Falsified data or information means data or information which has, for whatever reason, been knowingly made false or untrue by alteration, fabrication, omission, substitution, or mischaracterization.
- (9) Inaccurate data or other information means data or information that is in any way incorrect, mistaken or not accurate.
- (10) ~~(8)~~ Industrial Laboratory means a laboratory, including its employees and agents, operated by an industry to analyze samples from its wastewater treatment plants for toxicity measurements or resultant impacts to receiving waters.
- (11) ~~(9)~~ Parameters are subgroups of categories. Parameters are unique and separate if they are in separate categories or are performed using different species of test organisms. ~~In the case of biological survey,~~ For the category, Aquatic Population Survey, separate parameters are to be considered fish, macroinvertebrates, algae, aquatic macrophytes, and zooplankton.
- (12) ~~(10)~~ Public Laboratory means a laboratory, including its employees and agents, operated by a municipality, county, water and sewer authority, sanitary district, metropolitan sewerage district, or state or federal installa-

tion or any other governmental unit to analyze samples from its wastewater treatment plant(s) for toxicity measurements or resultant impacts to receiving waters.

(13) ~~(14)~~ Recertification is reaffirmation of certification.

(14) ~~(12)~~ Split samples are samples from either a surface water effluent discharge, surface water, or aquatic biological population survey which are segregated at the point of sampling or in the case of field survey, collected independently and then analyzed separately by both the State Laboratory and the commercial, public or industrial laboratory.

(15) ~~(13)~~ State laboratory means the ~~Biological Services Unit~~ Environmental Sciences Branch of the Water Quality Section of the North Carolina Division of Environmental Management or its successor.

(16) ~~(14)~~ Toxicant - Any specific chemical or compound or mixture of chemicals or compounds regulated within an NPDES permit and/or defined as a toxic substance in Rule .0202 of Subchapter 2B. ~~of these Regulations.~~

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66.

#### .1106 DECERTIFICATION

(a) ~~Laboratory Decertification once certified, a~~ A laboratory may forfeit its certification may be revoked for all categories by failing to:

(1) ~~Maintain~~ Failing to maintain the facilities, records, personnel, equipment or quality assurance program as set forth in the application or these Rules; or

(2) ~~Submit truthful and accurate data reports;~~ or Submitting inaccurate or falsified data reports or other information; or

(3) ~~Pay Failing to pay~~ required fees by the date due.

(b) ~~Categorical Decertification once certified, a~~ A laboratory may be required to forfeit its certification may be revoked for a category by failing for failure to:

(1) Obtain acceptable results on two consecutive evaluation sample submittals from the Division. Acceptable results on performance evaluation samples are those that vary by less than two standard deviations of the value established by the Division. The state laboratory may apply specific variance or statistical limits or performance criteria on performance evaluation samples or split samples for a particular testing procedure, including control population effects and taxonomic identification, as published in the Certification Criteria/Procedures Document; or

(2) Obtain acceptable results as set out in Paragraph (1) of this Rule on two consecutive split samples that have also been analyzed by the Division; or

(3) Submit a split sample to the Division as requested; or

(4) Use approved testing techniques; or

(5) Report to the state laboratory equipment changes that would affect its ability to perform a test category within 30 days of such change; or

(6) Report to the state laboratory analysis of performance evaluation samples submitted by the Division within required time of completion; or

(7) Maintain records and perform quality controls as set forth by these Rules and the Division for a particular category; or

(8) Maintain equipment required for any certified parameter; or

(9) Implement and maintain Quality Control Programs approved in conjunction with certification; or

(10) Maintain a qualified staff.

(c) Decertification Requirements:

(1) A laboratory is not to analyze samples for parameters in decertified categories for programs described in Rule .1102 of this Section.

(2) A decertified commercial laboratory must make arrangements to supply analysis through a certified laboratory during any decertification periods or notify clients that the analysis can not be supplied. The notify any clients affected by the decertification of such and supply the state laboratory with a list of those clients affected and written certification that those clients have been notified. Should the decertified laboratory arrange for a certified laboratory to perform analyses during the period of decertification, the decertified laboratory must supply the Division with the name of the replacement laboratory and the client(s) involved. The certified laboratory's name which performs analyses must appear on all data submitted to the Division.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66.

#### .1107 RECERTIFICATION

(a) A laboratory decertified for any reason, other than the submittal of falsified data reports or other information, may be recertified after 30

days, upon satisfactory demonstration to the state laboratory that all deficiencies have been corrected.

(b) In the case of a laboratory decertified for submitting falsified data reports or other information, recertification shall not occur until at least 12 months after the decertification and then only at such time as the laboratory has satisfactorily demonstrated to the Director that the standards for initial certification have been met.

(c) ~~(b)~~ Should decertification occur due to either failure of performance samples or split samples, a written request must be made to the state laboratory requesting evaluations similar to the parameters for which the laboratory was decertified. Two consecutive samples must be successfully evaluated to achieve recertification. The first of these samples for recertification will be submitted or arranged by the Division no later than 30 days after receipt of the written request. The second will be submitted or arranged no later than 30 days after the first.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66.*

#### .1108 RECIPROCITY

(a) Laboratories certified by other states or federal programs may be given reciprocal certification where such programs meet the requirements of these Rules. In requesting certification through reciprocity, laboratories shall include with the application a copy of their certification and the rules of the original certifying agency.

(b) Laboratories certified on the basis of program equivalency shall pay all fees specified by these ~~regulations~~. Rules.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66.*

#### .1109 ADMINISTRATION

The Director of the Division of Environmental Management, Department of Environment, Health, and Natural Resources, and Community Development, or his delegate, is authorized delegated authority to issue certification, to reject applications for certification, to renew certification, to issue recertification, to issue decertification, and to issue reciprocity certification.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66.*

#### .1110 IMPLEMENTATION

(a) Each laboratory requesting state certification or certification renewal or recertification shall submit an application in duplicate to the

Division. Each application will be reviewed to determine the adequacy of personnel, equipment, records, quality control procedures and methodology. After receiving a completed application and prior to issuing certification, a representative of the Division may visit each laboratory to verify the information in the application and the adequacy of the laboratory.

(b) Analytical methods, sample preservation, sample containers and sample holding times shall conform to the methodologies specified in the Certification Criteria Procedures Document. Deviations from these methods are acceptable only upon prior written approval from the state laboratory.

(c) In order to maintain certification, each laboratory will demonstrate satisfactory performance on evaluation samples submitted by the Division. These will be required no more than three times annually of certified laboratories for each parameter certified.

(d) In order to receive and maintain certification the following minimum criteria must be met:

- (1) The supervisor of an aquatic toxicology or biological survey laboratory must have a minimum of a B.S. degree from an accredited college or university in a biological science or closely related science curriculum and at least three years of cumulative laboratory experience in aquatic toxicity testing or aquatic biological survey, as appropriate, or a M.S. degree in a biological or closely related science and at least one year of cumulative laboratory experience in aquatic toxicity testing or aquatic biological survey, as appropriate.

- (2) All laboratory supervisors are subject to review by the Division. One person may serve as supervisor of no more than two laboratories. The supervisor is to provide direct supervision and evaluation of all technical personnel and is responsible for the proper performance and reporting of all analyses. Upon absence, the supervisor shall arrange for a suitable substitute capable of insuring the proper performance of all laboratory procedures. Existing laboratory supervisors who do not meet the minimum requirements may be accepted after review by the Division if they meet all other certification requirements and previous performance is deemed adequate.

- (3) ~~All laboratories subject to these rules must submit an application, including fees, for certification within 30 days of the effective date of these rules. A laboratory which~~

has submitted a complete application will be deemed to be in compliance with these rules and may conduct biological testing and submit results pending action by the Division on the application. All applications and fees are due 45 days prior to the requested certification date. Problems identified with the applying laboratory and resolution of these problems may extend the requested 45 day period from application to certification.

- (4) ~~After a six month implementation period for these new rules, all applications and fees are due 45 days prior to the requested certification date.~~
- (4) ~~(5)~~ Each laboratory shall develop and maintain a document outlining quality control procedures for all parameters in their certification and dissolved oxygen, temperature, and pH. All aquatic toxicology laboratories must also develop and maintain a document outlining quality control procedures for total hardness and total residual chlorine. These documents are to be included with submittal of the application.
- (5) ~~(6)~~ Each laboratory certified for the category of Aquatic Population Survey and Analysis shall develop and maintain a document outlining quality control procedures for taxonomic identifications and life-stage determinations.
- (6) ~~(7)~~ Supporting records shall be maintained as evidence that these practices are being effectively carried out and shall be available to the state laboratory upon request.
- (7) ~~(8)~~ The quality control program is to be approved in conjunction with the certification by the ~~Division~~ Director.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15A NCAC 10F .0318.

The proposed effective date of this action is October 1, 1992.

The public hearing will be conducted at 10:00 a.m. on June 16, 1992 at the Archdale Building,

Room 386, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

*Reason for Proposed Action:* To reduce the speed of boats in the vicinity of a children's camp.

*Comment Procedures:* Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from June 1, 1992, to July 1, 1992. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

## CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

### SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

#### SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

##### .0318 WARREN COUNTY

(a) Regulated Area. This Rule applies only to that portion of Lake Gaston which lies within the boundaries of Warren County.

(b) Speed Limit Near Ramps. No person shall operate a vessel at greater than no-wake speed within 50 yards of any public boat launching ramp while on the waters of Gaston Lake in Warren County.

(c) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a marked mooring area established with the approval of the Executive Director, or his representative, on the waters of Gaston Lake in Warren County.

(d) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area established with the approval of the Executive Director, or his representative, on the waters of Gaston Lake in Warren County.

(e) Speed Limit in Specific Zones. No person shall operate a vessel at greater than no-wake speed within 50 yards of the following marked zone located on the regulated area described in Paragraph (a) of this Rule: the entrance of the Camp Willow Run Canoe/Sail Cove.

(f) ~~(e)~~ Placement and Maintenance of Markers. The Board of Commissioners of Warren County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers. With regard to marking Gaston

Lake, all of the supplementary standards listed in Rule .0301(g) of this Section shall apply.

Statutory Authority G.S. 75A-3; 75A-15.

## TITLE 24 - INDEPENDENT AGENCIES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Housing Finance Agency intends to adopt rule(s) cited as 24 NCAC 10 .0101 - .0102 and .0201 - .0203.*

*The proposed effective date of this action is September 1, 1992.*

*The public hearing will be conducted at 10:00 a.m. on June 16, 1992 at the North Carolina Housing Finance Agency, 3300 Drake Circle, Suite 200, Raleigh, NC 27607-3300.*

*Reason for Proposed Action: To implement homelessness prevention demonstration program required under Chapter 582, House Bill 182.*

*Comment Procedures: Written comments must be submitted to the APA Coordinator by July 1, 1992. Oral comments may be presented at the hearing.*

## CHAPTER 1 - N.C. HOUSING FINANCE AGENCY

### SUBCHAPTER 10 - HOMELESSNESS PREVENTION DEMONSTRATION PROGRAM

#### SECTION .0100 - GENERAL INFORMATION

##### .0101 PURPOSE

The purpose of the Homelessness Prevention Demonstration Program is to establish a revolving loan fund for security and utility deposits to enable people in shelters and transitional housing projects to move into permanent housing. The revolving loan fund will be initially capitalized by funds available in the agency's Multifamily Rental Assistance Fund.

Statutory Authority G.S. 122A-5; 122A-5.1; c. 582, H.B. 182.

##### .0102 ELIGIBILITY

(a) Eligible borrowers under the program will be:

- (1) Without permanent or long term housing;
- (2) Currently residing in a homeless shelter, transitional housing project or other such facility or have been determined to be

homeless by a public or private social service agency working with the homeless;

(3) Able to pay rent or otherwise maintain permanent housing as evidenced by employment, Aid to Families with Dependent Children, Supplemental Security Income, rent subsidy vouchers or certificates or other benefits; and

(4) Without sufficient cash assets to make required security and utility deposits.

(b) Eligible applicants under the program are public and private social service organizations including, but not limited to, transitional housing facilities, homeless shelters and other organizations working with the homeless.

Statutory Authority G.S. 122A-5; 122A-5.1; c. 582, H.B. 182.

#### SECTION .0200 - ADMINISTRATION

##### .0201 APPLICATION PROCEDURES

(a) A request for proposals will be published in appropriate newspapers and other forms of public notice will be used to solicit applications from eligible organizations.

(b) Eligible borrowers will apply directly to the organizations selected for funding who will process the loans on behalf of the agency.

Statutory Authority G.S. 122A-5; 122A-5.1; c. 582, H.B. 182.

##### .0202 SELECTION PROCEDURES

(a) Organizations will be selected for funding by the board of directors of the agency based on geographical distribution and other selection criteria identified in the request for proposals.

(b) Individual borrowers will be selected by the participating organizations.

Statutory Authority G.S. 122A-5; 122A-5.1; c. 582, H.B. 182.

##### .0203 ADMINISTRATION

(a) The agency will enter into a funding agreement with each organization selected for funding. The agreement will include, but not be limited to:

- (1) The amount of funding;
- (2) The obligations of the recipient;
- (3) The terms of the disbursement of funds from the Multifamily Rental Assistance Fund; and
- (4) Provisions for the repayment of loans to the Multifamily Rental Assistance Fund.

(b) The agency will periodically review the performance of recipient organizations according to the funding agreement. This will be done at

least annually and may be done on a more frequent basis.

(c) Recipient organizations will submit such periodic reports as required by the agency to facilitate the monitoring process. The reports will be described in greater detail in the program funding documents. The reports will include, but not be limited to, progress on the accomplishment of program objectives including information on program beneficiaries and housing units obtained and annual audited financial statements.

(d) If the agency finds there has been substantial nonperformance under the funding agreement and the situation is not corrected within a period of time, as established in the funding agreement and after notice to the recipient of such finding, the agency may terminate or modify the agreement after written notice is provided.

*Statutory Authority G.S. 122A-5; 122A-5.1; c. 582, H.B. 182.*

## LIST OF RULES CODIFIED

*The List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.*

### *Key:*

*Citation* = Title, Chapter, Subchapter and Rule(s)  
*AD* = Adopt  
*AM* = Amend  
*RP* = Repeal  
*With Chgs* = Final text differs from proposed text  
*Eff. Date* = Date rule becomes effective  
*Temp. Expires* = Rule was filed as a temporary rule and expires on this date

### NORTH CAROLINA ADMINISTRATIVE CODE

APRIL 1992

#### TITLE DEPARTMENT

2 Agriculture  
 4 Economic and Community  
   Development  
 10 Human Resources  
 11 Insurance  
 13 Labor

#### TITLE DEPARTMENT

15A Environment, Health,  
       and Natural Resources  
 16 Education  
 17 Revenue  
 19A Transportation  
 21 Occupational Licensing  
   58 - Real Estate Commission

Citation				AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
2	NCAC	34	.1201 -.1203	•				05 01 92	
			.1204	•			•	05 01 92	
			.1205 - .1206	•				05 01 92	
	43L		.0202		•			05 01 92	
	48A		.0239 - .0240	•			•	05 01 92	
			.0241	•				05 01 92	
			.0601		•			05 01 92	
			.0608		•			05 01 92	
			.0611		•		•	05 01 92	
	52B		.0204		•		•	05 01 92	
			.0207		•		•	05 01 92	
			.0209		•			05 01 92	
			.0212		•			05 01 92	
	52E		.0103	•				05 01 92	
4	NCAC	3C	.0801		•			05 01 92	
			.0802 - .0803		•		•	05 01 92	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
4	NCAC	3C	.0804		•			05/01/92	
			.0807	•			•	05/01/92	
			.0901		•		•	05/01/92	
			.0903		•		•	05/01/92	
			.1001		•			05/01/92	
			.1103 - .1105	•				05/01/92	
			.1501 - .1502		•			05/01/92	
			.1601		•			05/01/92	
		3D	.0302		•		•	05/01/92	
			.0303		•			05/01/92	
			.0304		•		•	05/01/92	
		3H	.0001			•		05/01/92	
			.0002 - .0003	•			•	05/01/92	
		16F	.0001		•		•	05/11/92	
			.0002 - .0003		•			05/11/92	
			.0006 - .0007		•			05/11/92	
			.0008 - .0009		•		•	05/11/92	
			.0010		•			05/11/92	
			.0011		•		•	05/11/92	
			.0012		•			05/11/92	
		19L	.0103		•		•	05/01/92	
			.0401		•			05/01/92	
			.0404		•			05/01/92	
			.0701 - .0702			•		05/01/92	
			.0705			•		05/01/92	
			.0904		•			05/01/92	
			.1202		•			05/01/92	
			.1301		•		•	05/01/92	
		20A	.0001		•			05/01/92	
			.0003		•			05/01/92	
		20C	.0001		•			05/01/92	
10	NCAC	3J	.3401		•		•	06/01/92	
			.3403		•			06/01/92	
			.3405			•		06/01/92	
			.3416		•			06/01/92	
			.3418		•		•	06/01/92	
		3L	.0111 - .0116			•		07/01/92	
			.0205 - .0210			•		07/01/92	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
10	NCAC	3L	.0305 - .0314			•		07 01 92	
			.0418 - .0421			•		07 01 92	
			.0504 - .0506			•		07 01 92	
			.0604 - .0605			•		07 01 92	
			.0902 - .0907	•			•	07 01 92	
			.1001	•			•	07 01 92	
			.1002	•				07 01 92	
			.1003 - .1006	•			•	07 01 92	
			.1007	•				07 01 92	
			.1101 - .1102	•			•	07 01 92	
			.1103	•				07 01 92	
			.1104	•			•	07 01 92	
			.1105 - .1106	•				07 01 92	
			.1107 - .1108	•			•	07 01 92	
			.1109	•				07 01 92	
			.1111	•				07 01 92	
			.1201	•				07 01 92	
			.1301 - .1303	•				07 01 92	
			.1401 - .1402	•			•	07 01 92	
		26B	.0121		•		•	06 01 92	
		26H	.0206		•		•	05 01 92	
		39D	.0401		•			05 01 92	
			.0403		•			05 01 92	
		41I	.0304		•			06 01 92	
			.0408		•			06 01 92	
			.0410		•			06 01 92	
			.0411	•				06 01 92	
		42B	.1206		•			05 01 92	
			.1207		•		•	05 01 92	
		42C	.2302		•		•	05 01 92	
			.3103 - .3104		•			05 01 92	
		46H	.0203 - .0204		•			07 01 92	
			.0205			•		07 01 92	
			.0301		•			07 01 92	
			.0303			•		07 01 92	
			.0304 - .0306		•			07 01 92	
		50A	.0604		•			05 01 92	
11	NCAC	12	.0548		•			05 01 92	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
13	NCAC	15	.0201		•			05 01 92	
			.0202		•		•	05 01 92	
			.0203 - .0206		•			05 01 92	
			.0302 - .0303		•			05 01 92	
			.0403 - .0404		•			05 01 92	
			.0413 - .0414		•			05 01 92	
			.0420		•			05 01 92	
			.0424		•			05 01 92	
			.0429	•			•	05 01 92	
15A	NCAC	2B	.0312		•		•	06 01 92	
		3P	.0003		•			05 01 92	
		5B	.0005		•			05 01 92	
		10C	.0206		•			05 01 92	
			.0212		•			05 01 92	
			.0302		•			05 01 92	
			.0305		•			05 01 92	
			.0401 - .0402		•			05 01 92	
			.0407		•			05 01 92	
		10D	.0004		•			05 01 92	
		11	.0104		•		•	05 01 92	
			.0111		•		•	05 01 92	
			.0203		•			05 01 92	
			.0205		•		•	05 01 92	
			.0301		•			05 01 92	
			.0307		•		•	05 01 92	
			.0316 - .0317		•		•	05 01 92	
			.0338 - .0339		•		•	05 01 92	
			.0347			•		05 01 92	
			.0350		•		•	05 01 92	
			.0352 - .0355	•			•	05 01 92	
			.0402 - .0403		•			05 01 92	
			.0411		•		•	05 01 92	
			.0417		•		•	05 01 92	
			.0420		•			05 01 92	
			.0503		•			05 01 92	
			.0602		•		•	05 01 92	
			.0605		•		•	05 01 92	
			.0608		•			05 01 92	

*LIST OF RULES CODIFIED*

Citation				AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
15A	NCAC	11	.0703		•			05 01 92	
			.0910		•			05 01 92	
			.1002		•		•	05 01 92	
			.1007 - .1008		•			05 01 92	
			.1102		•		•	05 01 92	
			.1202		•		•	05 01 92	
			.1206		•		•	05 01 92	
			.1229		•			05 01 92	
			.1324		•		•	05 01 92	
			.1403		•			05 01 92	
			.1405		•		•	05 01 92	
			.1418 - .1419		•			05 01 92	
	19A		.0301		•			05 01 92	
16	NCAC	6D	.0210		•		•	06 01 92	
17	NCAC	9H	.0208 - .0209	•				05 01 92	
			.0305 - .0306	•				05 01 92	
19A	NCAC	2B	.0165		•			05 01 92	10 31 92
21	NCAC	58A	.0601		•		•	05 01 92	
			.0610		•			05 01 92	
			.0612	•				05 01 92	
			.0613	•			•	05 01 92	
			.0902		•			05 01 92	
	58C		.0501		•			05 01 92	
	58D		.0202		•		•	05 01 92	
			.0601 - .0602	•			•	05 01 92	
			.0603 - .0606	•				05 01 92	
			.0701	•				05 01 92	

## RRC OBJECTIONS

*The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).*

### AGRICULTURE

#### Plant Industry

2 NCAC 48A .0239 - Permit to Sell Bees	RRC Objection	04/16/92
Agency Revised Rule	Obj. Removed	04/16/92
2 NCAC 48A .0240 - Form BS-11	RRC Objection	04/16/92
Agency Revised Rule	Obj. Removed	04/16/92
2 NCAC 48A .0611 - Program Participation and Payment of Fees	RRC Objection	04/16/92
Agency Revised Rule	Obj. Removed	04/16/92
2 NCAC 48E .0101 - Definitions	RRC Objection	10/17/91
Agency Revised Rule	RRC Objection	10/17/91
Agency Responded	No Action	12/19/91
Agency Withdrew Rule		02/20/92

### CRIME CONTROL AND PUBLIC SAFETY

#### State Highway Patrol

14A NCAC 9H .0304 - Notifying Registered Owner	RRC Objection	12/19/91
No Response from Agency	No Action	01/24/92
Agency Withdrew Rule		02/20/92

### ECONOMIC AND COMMUNITY DEVELOPMENT

#### Banking Commission

4 NCAC 3C .0807 - Subsidiary Investment Approval	RRC Objection	04/16/92
Agency Revised Rule	Obj. Removed	04/16/92
4 NCAC 3C .0901 - Books and Records	RRC Objection	04/16/92
Agency Revised Rule	Obj. Removed	04/16/92
4 NCAC 3C .0903 - Retention: Reproduction/Disposition of Bank Records	RRC Objection	04/16/92
Agency Revised Rule	Obj. Removed	04/16/92
4 NCAC 3D .0302 - Administration of Fiduciary Powers	RRC Objection	04/16/92
Agency Revised Rule	Obj. Removed	04/16/92
4 NCAC 3H .0102 - Regional Bank Holding Company Acquisitions	RRC Objection	04/16/92
Agency Revised Rule	Obj. Removed	04/16/92

#### Community Assistance

4 NCAC 19L .0103 - Definitions	RRC Objection	04/16/92
Agency Revised Rule	Obj. Removed	04/16/92
4 NCAC 19L .0403 - Size and Use of Grants Made to Recipients	RRC Objection	04/16/92
4 NCAC 19L .0407 - General Application Requirements	RRC Objection	04/16/92
4 NCAC 19L .1301 - Definition	RRC Objection	04/16/92
Agency Revised Rule	Obj. Removed	04/16/92

#### Credit Union Division

4 NCAC 6C .0407 - Business Loans	RRC Objection	01/24/92
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## RRC OBJECTIONS

<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/20/92</i>
Savings Institutions Division: Savings Institutions Commission		
4 NCAC 16F .0001 - Permitted Activities	RRC Objection	04/16/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/16/92</i>
4 NCAC 16F .0008 - Finance Subsidiary Transactions With Parent	RRC Objection	04/16/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/16/92</i>
4 NCAC 16F .0009 - Issuance of Securities by Finance Subsidiaries	RRC Objection	04/16/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/16/92</i>
4 NCAC 16F .0011 - Holding Company Subsidiaries/Finance Subsidiaries	RRC Objection	04/16/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/16/92</i>

## ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

### Coastal Management

15A NCAC 7H .0306 - General Use Standards for Ocean Hazard Areas	RRC Objection	01/24/92
<i>Agency Responded</i>	<i>No Action</i>	<i>01/24/92</i>
<i>Rule Returned to Agency</i>		<i>01/24/92</i>
<i>Agency Filed Rule with OAH</i>	<i>Eff.</i>	<i>03/01/92</i>
15A NCAC 7J .0301 - Who is Entitled to a Contested Case Hearing	RRC Objection	02/20/92
<i>Rule Returned to Agency</i>		<i>03/19/92</i>
<i>Agency Filed Rule with OAH</i>	<i>Eff.</i>	<i>03/31/92</i>
15A NCAC 7J .0301 - Who is Entitled to a Contested Case Hearing	RRC Objection	03/19/92
<i>Rule Returned to Agency</i>		<i>03/19/92</i>
<i>Agency Filed Rule with OAH</i>	<i>Eff.</i>	<i>04/01/92</i>
15A NCAC 7J .0302 - Petition For Contested Case Hearing	RRC Objection	02/20/92
<i>Rule Returned to Agency</i>		<i>03/19/92</i>
<i>Agency Filed Rule with OAH</i>	<i>Eff.</i>	<i>03/31/92</i>
15A NCAC 7J .0302 - Petition For Contested Case Hearing	RRC Objection	03/19/92
<i>Rule Returned to Agency</i>		<i>03/19/92</i>
<i>Agency Filed Rule with OAH</i>	<i>Eff.</i>	<i>04/01/92</i>
15A NCAC 7J .0402 - Criteria for Grant or Denial of Permit Applications	RRC Objection	10/17/91
15A NCAC 7M .0201 - Declaration of General Policy	RRC Objection	10/17/91
<i>Agency Responded</i>	<i>No Action</i>	<i>12/19/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>01/24/92</i>
<i>Rule Returned to Agency</i>		<i>01/24/92</i>
<i>Agency Filed Rule with OAH</i>	<i>Eff.</i>	<i>03/01/92</i>
15A NCAC 7M .0202 - Policy Statements	RRC Objection	10/17/91
<i>Agency Responded</i>	<i>No Action</i>	<i>12/19/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>01/24/92</i>
<i>Rule Returned to Agency</i>		<i>01/24/92</i>
<i>Agency Filed Rule with OAH</i>	<i>Eff.</i>	<i>03/01/92</i>
15A NCAC 7M .0303 - Policy Statements	RRC Objection	10/17/91
<i>Agency Responded</i>	<i>No Action</i>	<i>12/19/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>01/24/92</i>
<i>Rule Returned to Agency</i>		<i>01/24/92</i>
<i>Agency Filed Rule with OAH</i>	<i>Eff.</i>	<i>03/01/92</i>
15A NCAC 7M .0403 - Policy Statements	RRC Objection	10/17/91
<i>Agency Responded</i>	<i>No Action</i>	<i>12/19/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/20/92</i>
15A NCAC 7M .0901 - Declaration of General Policy	RRC Objection	10/17/91
<i>Agency Responded</i>	<i>No Action</i>	<i>12/19/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>01/24/92</i>

## RRC OBJECTIONS

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<i>Rule Returned to Agency</i>		01/24/92
<i>Agency Filed Rule with OAH</i>	Eff.	03/01/92
Environmental Management		
<i>15A NCAC 2E .0107 - Delegation</i>	<i>RRC Objection</i>	03/19/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	03/19/92
Governor's Waste Management Board		
<i>15A NCAC 14B .0002 - Definitions</i>	<i>RRC Objection</i>	03/19/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	03/19/92
Radiation Protection		
<i>15A NCAC 11 .0338 - Specific Terms and Conditions of Licenses</i>	<i>RRC Objection</i>	04/16/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92
<i>15A NCAC 11 .0339 - Expiration of Licenses</i>	<i>RRC Objection</i>	04/16/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92
Sedimentation Control		
<i>15A NCAC 4A .0005 - Definitions</i>	<i>RRC Objection</i>	12/19/91
<i>Agency Responded</i>	<i>No Action</i>	01/24/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	02/20/92
<i>15A NCAC 4C .0007 - Procedures: Notices</i>	<i>RRC Objection</i>	12/19/91
<i>Agency Responded</i>	<i>No Action</i>	01/24/92
	<i>Obj. Removed</i>	02/20/92
<b>HUMAN RESOURCES</b>		
Facility Services		
<i>10 NCAC 3J .2801 - Supervision</i>	<i>RRC Objection</i>	04/16/92
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	04/16/92
<i>10 NCAC 3J .2905 - Personal Hygiene Items</i>	<i>RRC Objection</i>	10/17/91
<i>10 NCAC 3J .3401 - Applicability - Construction</i>	<i>RRC Objection</i>	04/16/92
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	04/16/92
<i>10 NCAC 3L .0902 - License</i>	<i>RRC Objection</i>	04/16/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92
<i>10 NCAC 3L .0903 - Application for and Issuance of License</i>	<i>RRC Objection</i>	04/16/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92
<i>10 NCAC 3L .0904 - Inspections</i>	<i>RRC Objection</i>	04/16/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92
<i>10 NCAC 3L .0905 - Multiple Premises</i>	<i>RRC Objection</i>	04/16/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92
<i>10 NCAC 3L .1202 - Case Review and Plan of Care</i>	<i>RRC Objection</i>	04/16/92
<i>10 NCAC 3U .0102 - Definitions</i>	<i>RRC Objection</i>	03/19/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	03/19/92
Individual and Family Support		
<i>10 NCAC 42E .0905 - Personnel: Centers: Homes with Operator/Staff</i>	<i>RRC Objection</i>	01/24/92
<i>Agency Responded</i>	<i>No Action</i>	02/20/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	03/19/92
<i>10 NCAC 42E .0906 - Personnel: Day Care Homes: /Staff Person/Op</i>	<i>RRC Objection</i>	01/24/92

## RRC OBJECTIONS

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<i>Agency Responded</i>	<i>No Action</i>	02/20/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	03/19/92
10 NCAC 42E .1207 - Procedure	<i>RRC Objection</i>	01/24/92
<i>Agency Responded</i>	<i>No Action</i>	02/20/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	03/19/92
10 NCAC 42Z .0604 - Staff Requirements	<i>RRC Objection</i>	01/24/92
<i>Agency Responded</i>	<i>No Action</i>	02/20/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	03/19/92
10 NCAC 42Z .0901 - Procedure	<i>RRC Objection</i>	01/24/92
<i>Agency Responded</i>	<i>No Action</i>	02/20/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	03/19/92

### LABOR

#### Elevator and Amusement Device

13 NCAC 15 .0402 - Responsibility for Compliance	<i>RRC Objection</i>	04/16/92
13 NCAC 15 .0429 - Go Karts	<i>RRC Objection</i>	04/16/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92

### LICENSING BOARDS AND COMMISSIONS

#### Certified Public Accountant Examiners

* 21 NCAC 8G .0313 - Firm Name	<i>RRC Objection</i>	10/17/91
<i>Agency Responded</i>	<i>No Action</i>	12/19/91

*This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.*

**25 NCAC 1B .0414 - SITUATIONS IN WHICH ATTORNEYS FEES MAY BE AWARDED**

Robert Roosevelt Reilly Jr., Administrative Law Judge with the Office of Administrative Hearings, declared Rule 25 NCAC 1B .0414 void as applied in *William Paul Fearington, Petitioner v. University of North Carolina at Chapel Hill, Respondent* (91 OSP 0905).

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.*

KEY TO CASE CODES

ABC	Alcoholic Beverage Control Commission	EDC	Department of Public Instruction
BDA	Board of Dental Examiners	EHR	Department of Environment, Health, and Natural Resources
BME	Board of Medical Examiners	ESC	Employment Security Commission
BMS	Board of Mortuary Science	HAF	Hearing Aid Dealers and Fitters Board
BOG	Board of Geologists	HRC	Human Relations Commission
BON	Board of Nursing	IND	Independent Agencies
BOO	Board of Opticians	INS	Department of Insurance
CFA	Commission for Auctioneers	LBC	Licensing Board for Contractors
COM	Department of Economic and Community Development	MLK	Milk Commission
CPS	Department of Crime Control and Public Safety	NHA	Board of Nursing Home Administrators
CSE	Child Support Enforcement	OAH	Office of Administrative Hearings
DAG	Department of Agriculture	OSP	Department of State Personnel
DCC	Department of Community Colleges	PHC	Board of Plumbing and Heating Contractors
DCR	Department of Cultural Resources	POD	Board of Podiatry Examiners
DCS	Distribution Child Support	SOS	Department of Secretary of State
DHR	Department of Human Resources	SPA	Board of Examiners of Speech and Language Pathologists and Audiologists
DOA	Department of Administration	WRC	Wildlife Resources Commission
DOJ	Department of Justice		
DOL	Department of Labor		
DSA	Department of State Auditor		
DST	Department of State Treasurer		

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Alyce W. Pringle v. Department of Education	88 OSP 0592 88 EEO 0992	Morgan	03/27/92
Susie Woodle v. Department of Commerce, State Ports Authority	88 OSP 1411	Mann	03/25/92
Fernando Demeco White v. DIHR, Caswell Center	89 OSP 0284	West	01/10/92
Cathy Faye Barrow v. DHR, Craven County Health Department	89 DHR 0715	Morgan	03/09/92
Kenneth W. White v. Employment Security Commission	90 OSP 0390	Becton	01/13/92

# CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Craig S. Eury v. Employment Security Commission	90 OSP 0391	Becton	01/13/92
Jolene H. Johnson v. DHR, Division of Medical Assistance	90 DHR 0685	Morgan	02/21/92
Dover W. Walker v. Department of Environment, Health, & Natural Resources	90 OSP 0873 91 OSP 0180	Chess	05/06/92
Joseph F. Nunes v. DHR, Division of Social Services, CSE	90 CSE 1036	Morgan	04/15/92
Sgt. Carl Edmunds v. DHR, Division of Social Services, CSE	90 CSE 1135	Nesnow	02/04/92
Rafael Figueroa v. DHR, Division of Social Services, CSE	90 CSE 1138	Morgan	03/30/92
Sammie L. Frazier v. DHR, Division of Social Services, CSE	90 CSE 1167	Morgan	03/24/92
Richard A. Boyett v. DHR, Division of Social Services, CSE	90 CSE 1184	Morgan	03/30/92
Lance McQueen v. DHR, Division of Social Services, CSE	90 CSE 1204	Morgan	03/30/92
Kermit Linney v. Department of Correction	90 OSP 1380	Morrison	02/12/92
Larry D. Oates v. Department of Correction	90 OSP 1385	Becton	04/06/92
Antonio S. Henderson v. DHR, Division of Social Services, CSE	90 CSE 1391	Becton	05/04/92
Fernando Guarachi v. DHR, Division of Social Services, CSE	90 CSE 1393	Morgan	04/07/92
Jerry Odell Johnson v. Sheriffs' Education & Training Standards Comm	90 DOJ 1411	Morgan	01/09/92
Stoney W. & Darlene L. Thompson v. Department of Environment, Health, & Natural Resources	91 EHR 0003	West	01/06/92
Gloria Jones/Medbill v. Children Special Health Services	91 EHR 0142	Morgan	03/11/92

**CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Shonn S. Peek v. Bd of Trustees/Teachers' & St Emp Retirement Sys	91 DST 0147	Gray	04/16/92
Willie C. Rorie v. DHR, Division of Social Services, CSE	91 CSE 0166	Morgan	04/13/92
Thomas Such v. EHR and William W. Cobey Jr.	91 OSP 0202	Becton	02/20/92
N.C. Human Relations Comm. on behalf of Deborah Allen v. Charles Watkins	91 HRC 0204	Morrison	03/17/92
Cindy Gale Hyatt v. Department of Human Resources	91 DHR 0215	Morgan	02/27/92
Gliston L. Morrissey v. Bd of Trustees Teachers' & St Emp Retirement Sys	91 DST 0232	West	02/03/92
Anthony Caldwell v. Juvenile Evaluation Center	91 OSP 0259	Morgan	03/12/92
Kenneth R. Downs, Guardian of Mattie M. Greene v. Teachers' & St Emp Comp Major Medical Plan	91 DST 0261	Gray	02/20/92
Deborah W. Clark v. DHR, Dorothea Dix Hospital	91 OSP 0297	Nesnow	01/16/92
Wade R. Bolton v. DHR, Division of Social Services, CSE	91 CSE 0312	Mann	01/14/92
Betty L. Rader v. Teachers' & St Emp Major Medical Plan	91 DST 0330	Morgan	01/10/92
Marcia Carpenter v. UNC - Charlotte	91 OSP 0346	Mann	03/12/92
James Arthur Lee v. NC Crime Victims Compensation Commission	91 CPS 0355	Chess	03/05/92
Fred A. Wilkie v. Wildlife Resources Commission	91 OSP 0398	Chess	04/20/92
Michael Darwin White v. Department of Environment, Health, & Natural Resources	91 OSP 0413	Morrison	02/14/92

# **CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Curtis Wendell Bigelow v. CCPS, Division of State Highway Patrol	91 OSP 0418	West	03/10/92
Alcoholic Beverage Control Commission v. Hilsinger Enterprises, Inc., t/a The Waterin Hole	91 ABC 0442	Gray	01/10/92
Penny Whitfield v. Pitt County Mental Health Center	91 OSP 0465	Gray	01/08/92
Senior Citizens' Home Inc. v. DHR, Division of Facility Services, Licensure Section	91 DHR 0467	Gray	02/18/92
Alcoholic Beverage Control Commission v. Everett Lee Williams Jr., t/a Poor Boys Gameroom	91 ABC 0531	Morrison	01/31/92
Jonathan Russell McCravey, t/a Encore v. Alcoholic Beverage Control Commission	91 ABC 0534	Morrison	02/04/92
Dorothy "Cris" Crissman v. Department of Public Instruction	91 OSP 0581	Morrison	04/03/92
Horace Britton Askew Jr. v. Sheriffs' Education & Training Standards Comm	91 DOJ 0610	Reilly	01/22/92
Roy L. Keever v. Department of Correction	91 OSP 0615	West	02/26/92
Ten Broeck Hospital (Patient #110587, Medicaid #124-24-4801-C) Ten Broeck Hospital (Patient #110538, Medicaid #240334254S) Ten Broeck Hospital (Patient #110788, Medicaid #900-12-6762-T) v. DHR, Division of Medical Assistance	91 DHR 0618 91 DHR 0429 91 DHR 1265	Morrison	04/08/92
Larry Madison Chatman, t/a Larry's Convenient Store v. Alcoholic Beverage Control Commission	91 ABC 0626	Gray	02/20/92
Cecil Leon Neal v. Department of Economic & Community Development	91 OSP 0648	Mann	02/07/92
DAG, Food & Drug Protection Div, Pesticide Section v. D. Carroll Vann	91 DAG 0654	Morrison	01/15/92
Kidd's Day Care and Preschool v. Child Day Care Section	91 DHR 0666 91 DHR 0666	Becton	03/25/92 04/10/92

**CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Mary Tisdale v. Hyde County Health Department and EHR	91 EHR 0679	Morgan	03/23/92
Alcoholic Beverage Control Commission v. Kenneth Richard Cooper, t/a Silvers	91 ABC 0680	Becton	02/26/92
Sarah Linda Hankins v. Alcoholic Beverage Control Commission	91 ABC 0688	Mann	02/27/92
Keith Hull v. DHR - Division of Medical Assistance	91 DHR 0707	Chess	02/27/92
Alcoholic Beverage Control Commission v. Spring Garden Bar & Grill Inc., T/A Spring Garden Bar & Grill	91 ABC 0753	Morrison	05/08/92
Nalley Commercial Properties v. Department of Environment, Health, & Natural Resources	91 EHR 0757	Becton	05/08/92
John E. Canup v. DHR, Division of Social Services, CSE	91 CSE 0759	Reilly	01/13/92
Falcon Associates, Inc. v. Department of Environment, Health, & Natural Resources	91 EHR 0767 91 EHR 0768	West	01/06/92
Michael F. Stone v. Bd of Trustees/Local Gov't Emp Retirement Sys	91 DST 0771	West	02/24/92
Ruben Gene McLean v. Alcoholic Beverage Control Commission	91 ABC 0772	Nesnow	01/30/92
Bobby McEachern v. Fayetteville State University	91 OSP 0839	Gray	02/06/92
Singletree, Inn v. EHR, and Stokes County Health Department	91 EHR 0840	Nesnow	01/16/92
Henry B. Barnhardt v. Mt Pleasant Vol Fire Dept, St Auditor/Firemen's Rescue Squad Workers' Pension Fund	91 DSA 0843	Reilly	01/29/92
Mackey L. Hall v. DHR, Division of Social Services, CSE	91 CSE 0854	Reilly	01/17/92
Gloria J. Woodard v. Division of Motor Vehicles	91 OSP 0855 91 OSP 0855	Mann	04/09/92 04/13/92

# **CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Kay Long v. Department of Human Resources	91 DHR 0873	Reilly	03/17/92
Alcoholic Beverage Control Commission v. Mack Ray Chapman, t/a Ponderosa Lounge	91 ABC 0887	Morrison	01/31/92
Joseph W. Devlin Jr., Johnson Brothers Carolina Dist v. Alcoholic Beverage Control Commission	91 ABC 0890	West	02/11/92
Ossie Beard v. EHR & Wastewater Treatment Plant Certification Comm.	91 EHR 0893	Nesnow	03/12/92
Alcoholic Beverage Control Commission v. Trinity C. C., Inc., t/a Trinity College Cafe	91 ABC 0915	West	02/11/92
N.C. Alcoholic Beverage Control Commission v. Jessie Pendergraft Rigsbee, T/A Club 2000	91 ABC 0919	West	03/12/92
Alcoholic Beverage Control Commission v. Cedric Warren Edwards, t/a Great, American Food Store	91 ABC 0923	Becton	02/26/92
Department of Environment, Health, & Natural Resources v. Hull's Sandwich Shop, Andy Hull	91 EHR 0936	West	01/09/92
Betty Davis d/b/a ABC Academy v. DHR, Division of Facility Services, Child Day Care Section	91 DHR 0955	Morrison	01/31/92
Thomas J. Hailey v. EHR and Rockingham County Health Department	91 EHR 0957	Becton	01/15/92
Ronald Waverly Jackson v. EHR, Division of Maternal & Child Health, WIC Section	91 EHR 0963	Gray	02/24/92
Century Care of Laurinburg, Inc. v. DHR, Division of Facility Services, Licensure Section	91 DHR 0981	Gray	03/24/92
James K. Moss Sr. v. DHR, Division of Social Services, CSE	91 CSE 0985	Reilly	05/18/92
David J. Anderson v. DHR, Division of Social Services, CSE	91 CSE 0989	Morgan	04/20/92
David Lee Watson v. DHR, Division of Social Services, CSE	91 CSE 0992	Reilly	05/18/92
Herbert R. Clayton v. DHR, Division of Social Services, CSE	91 CSE 1000	Mann	04/02/92

**CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Roy Shealey v. Victims Compensation Commission	91 CPS 1002	Morrison	01/31/92
Joe L. Williams Jr. v. DHIR, Division of Social Services, CSE	91 CSE 1014	Morrison	04/30/92
Willie Brad Baldwin v. DHR, Division of Social Services, CSE	91 CSE 1020	Reilly	01/28/92
Clinton Dawson v. N.C. Department of Transportation	91 OSP 1021	Mann	03/05/92
Benjamin C. Dawson v. Department of Correction	91 OSP 1025	West	02/18/92
Paulette R. Smith v. DHR, Division of Social Services, CSE	91 CSE 1026	Reilly	02/27/92
Scot Dawson v. Department of Labor	91 DOL 1031	West	02/24/92
Luis A. Rosario v. DHR, Division of Social Services, CSE	91 CSE 1046	Morrison	03/03/92
Elijah Jefferson Jr. v. DHR, Division of Social Services, CSE	91 CSE 1055	Gray	04/20/92
Randy Quinton King v. CCPS, State Highway Patrol	91 OSP 1064	Gray	03/24/92
Ronnie C. Glenn v. DHR, Division of Social Services, CSE	91 CSE 1066	Nesnow	05/05/92
James D. Robinson v. DHR, Division of Social Services, CSE	91 CSE 1068	Gray	04/29/92
William H. Hogsed v. DHIR, Division of Social Services, CSE	91 CSE 1070	Nesnow	03/16/92
David L. Brown v. DHR, Division of Social Services, CSE	91 CSE 1074	Morrison	03/31/92
Donald M. Washington v. DHIR, Division of Social Services, CSE	91 CSE 1078	Morrison	03/04/92
William F. Driscoll v. DHR, Division of Social Services, CSE	91 CSE 1080	Mann	04/28/92

**CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Melvin L. Miller Sr. v. DHR, Division of Social Services, CSE	91 CSE 1084	Morrison	03/16/92
Bobby G. Evans v. DHR, Division of Social Services, CSE	91 CSE 1094	Reilly	01/13/92
William Louis Timmons v. DHR, Division of Social Services, CSE	91 CSE 1104	Mann	02/18/92
Gerald Richardson v. DHR, Division of Social Services, CSE	91 CSE 1112	Morgan	05/06/92
Edmund D. Hester v. DHR, Division of Social Services, CSE	91 CSE 1113	Mann	04/21/92
Raymond Junior Cagle v. DHR, Division of Social Services, CSE	91 CSE 1123	Mann	03/30/92
Richard E. Murray v. Department of Human Resources	91 CSE 1134	Reilly	01/13/92
Pathia Miller v. DHR, Division of Facility Services, Child Day Care Section	91 DHR 1135	Mann	03/31/92
Atlantic Enterprises, Inc. v. Department of Environment, Health, & Natural Resources	91 EHR 1136	Reilly	01/23/92
Theresa M. Sparrow v. Criminal Justice Education & Training Standards Comm	91 DOJ 1138	Mann	02/04/92
Darrel D. Shields v. DHR, Division of Social Services, CSE	91 CSE 1141	Morgan	03/30/92
John H. Price v. DHR, Division of Social Services, CSE	91 CSE 1142	Morgan	05/06/92
James A. Hinson v. DHR, Division of Social Services, CSE	91 CSE 1154	Mann	02/18/92
George H. Parks Jr. v. DHR, Division of Social Services, CSE	91 CSE 1157	Morrison	01/27/92
Adrian Chandler Harley v. DHR, Division of Social Services, CSE	91 CSE 1180	Nesnow	02/10/92
Billy J. Hall v. DHR, Division of Social Services, CSE	91 CSE 1182	Nesnow	02/10/92

**CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Donaldson L. Wooten v. DHR, Division of Social Services, CSE	91 CSE 1189	Reilly	03/13 92
William P. Reid v. DHR, Division of Social Services, CSE	91 CSE 1193	Nesnow	02 04 92
Jeddie R. Bowman v. DHR, Division of Social Services, CSE	91 CSE 1195	Morrison	04 30 92
Ronald G. Bolden v. DHR, Division of Social Services, CSE	91 CSE 1208	Gray	02 26 92
Wayne Phillip Irby v. DHR, Division of Social Services, CSE	91 CSE 1211	Nesnow	02 04 92
Tony Hollingsworth v. DHR, Division of Social Services, CSE	91 CSE 1212	Nesnow	02 10 92
Russell G. Ginn v. Department of Correction	91 OSP 1224	Reilly	02 14 92
Angela McDonald McDougald v. DHR, Division of Social Services, CSE	91 CSE 1227	Nesnow	02 28 92
Sering O. Mbye v. DHR, Division of Social Services, CSE	91 CSE 1228	Mann	03 11 92
Jimmie McNair, D.B.A. Pleasure Plus v. Alcoholic Beverage Control Commission	91 ABC 1235	Gray	05 04 92
Arthur Thomas McDonald Jr. v. DHR, Division of Social Services, CSE	91 CSE 1252	Morrison	03 31 92
Stanford Earl Kern v. DHR, Division of Social Services, CSE	91 CSE 1255	Nesnow	02 04 92
Gene Weaver v. DHR, Division of Social Services, CSE	91 CSE 1264	Reilly	03 25 92
James T. White v. DHR, Division of Social Services, CSE	91 CSE 1271	Gray	02 27 92
Ronald Brown and Regina Brown v. DHR, Division of Facility Services	91 DHR 1278	Becton	02 25 92
Terrance Freeman v. DHR, Division of Social Services, CSE	91 CSE 1283	Nesnow	05 04 92

# **CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Samuel Armwood v. David Brantley, Wayne County Clerk of Superior Court	91 CSE 1285	Reilly	02/11/92
Peter Gray Coley v. DHR, Division of Social Services, CSE	91 CSE 1297	Reilly	04/21/92
Enos M. Cook v. DHR, Division of Social Services, CSE	91 CSE 1303	Morrison	04/13/92
Raymond Vaughan v. DHR, Division of Social Services, CSE	91 CSE 1304	Reilly	03/09/92
Stanley Wayne Gibbs v. Elizabeth City State University	91 OSP 1318	Gray	01/14/92
David Martin Strode v. DHR, Division of Social Services, CSE	91 CSE 1327	Morgan	03/19/92
Anthony T. McNeill v. DHR, Division of Social Services, CSE	91 CSE 1336	Becton	04/20/92
D. C. Bass v. Department of Crime Control and Public Safety	91 OSP 1341	Chess	04/07/92
Wallace Day Care Center v. DHR, Division of Facility Services	91 DHR 1343	Nesnow	05/04/92
Steveason M. Bailey v. McDowell Technical Community College	91 OSP 1353	Morrison	01/28/92
Gary N. Rhoda v. Department of Correction	91 OSP 1361	Nesnow	01/31/92
William A. Sellers v. DHR, Division of Social Services, CSE	91 CSE 1395	Gray	04/01/92
Marc D. Walker v. CCPS, Division of State Highway Patrol	91 OSP 1399	Morrison	03/16/92
Serena Gaynor v. DHR, Division of Vocational Rehabilitation	91 OSP 1403	Gray	03/02/92
Betty Davis, D/B/A ABC Academy v. DHR, Division of Facility Services, Child Day Care Section	91 DHR 1408	Chess	03/30/92
Bill Jones Jr. and Jessie F. Jones v. Department of Human Resources	91 DHR 1411	Nesnow	05/01/92

**CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Charles R. Wellons II v. Department of Environment, Health, & Natural Resources	91 EHR 1418	West	02/25/92
Charley Joe Milligan v. Bd of Trustees Local Gov't Emp Retirement Sys	91 DST 1424	Gray	02/27/92
Roy Blalock, Deborah Eakins, John Gordon Wright v. UNC - Chapel Hill	91 OSP 1429 91 OSP 1430	Gray	03/13/92
James R. Fath v. Crime Victims Compensation Commission	91 CPS 1451	Morrison	04/15/92
Ollie Robertson v. Crime Victims Compensation Commission	92 CPS 0002	Morrison	04/15/92
New Bern-Craven County Board of Education, a Statutory Corporation of North Carolina v. The Honorable Harlan E. Boyles, State Treasurer, The Honorable Fred W. Talton, State Controller, The Honorable William W. Cobey, Jr., Sec. of EHR, Dr. George T. Everett, Dir., Div. of Environmental Mgmt.	92 EHR 0003	Reilly	03/13/92
Ellen Allgood, The Red Bear Lounge, Inc., 4022 North Main St., High Point, NC 27265 v. Alcoholic Beverage Control Commission	92 ABC 0007	Chess	04/07/92
Robert Gooden v. Department of Labor, Wage & Hour Division	92 DOL 0009	West	05/14/92
Mrs. Gillie L. Edwards, Swift Mart #3 v. EHR, Division of Maternal & Child Health, WIC Section	92 EHR 0022	Morrison	05/18/92
Private Protective Services Board v. Robert R. Missildine, Jr.	92 DOJ 0025	Becton	03/23/92
Cindy G. Bartlett v. Department of Correction	92 OSP 0029	Reilly	03/16/92
Mr. Kenneth L. Smith, Pitt County Mart, Inc. v. EHR, Division of Maternal & Child Health, WIC Section	92 EHR 0085	Becton	04/15/92
Kurt Hafner v. N.C. Retirement System et al.	92 DST 0094	Gray	03/04/92
Margaret Coggins v. EHR, Division of Maternal & Child Health, WIC Section	92 EHR 0095	Becton	04/28/92

**CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Roy Blalock, Deborah Eakins, John Gordon Wright v. UNC - Chapel Hill	92 OSP 0096	Gray	03/13/92
Paula Dail v. EHR, Division of Maternal & Child Health, WIC Section	92 EHR 0098	Becton	04/28/92
Youth Focus, Inc. (MID # 239-23-0865T) v. DHR, Division of Medical Assistance	92 DHR 0110	Gray	02/26/92
Charles W. Parker v. Department of Agriculture	92 OSP 0177	Reilly	04/27/92
Brunswick County v. Department of Environment, Health, & Natural Resources	92 EHR 0195	Morrison	04/21/92
John Marley Jr. v. Department of Correction	92 OSP 0213	Reilly	05/18/92
Timothy B. Milton v. Crime Victims Compensation Commission	92 CPS 0265	Reilly	05/18/92
Leon Scott Wilkinson v. Criminal Justice Education & Training Standards Comm	92 DOJ 0280	West	04/24/92
Thomas L. Rogers v. DHR, Division of Youth Services	92 OSP 0287	Gray	04/30/92
Paul M. Fratazzi, LPN v. Polk Youth Institute	92 OSP 0325	Nesnow	05/01/92
Robert S. Scheer v. Department of Crime Control & Public Safety	92 CPS 0339	Gray	05/18/92
Jeffrey Mark Drane v. Private Protective Services Board	92 DOJ 0372	Mann	05/12/92
Danny G. Hicks v. Private Protective Services Board	92 DOJ 0373	Mann	05/12/92
Max Bolick v. Private Protective Services Board	92 DOJ 0374	Mann	05/12/92
Fred Henry Hampton v. Criminal Justice Education & Training Stds Comm	92 DOJ 0393	West	04/23/92

## CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS

DOVER W. WALKER,  
Petitioner

v.

NORTH CAROLINA DEPARTMENT  
OF ENVIRONMENT, HEALTH, AND  
NATURAL RESOURCES,  
Respondent.

90 OSP 0873  
COUNTY OF GASTON

DOVER W. WALKER,  
Petitioner

v.

NORTH CAROLINA DEPARTMENT  
OF ENVIRONMENT, HEALTH, AND  
NATURAL RESOURCES,  
Respondent.

91 OSP 0180  
COUNTY OF CLEVELAND

### RECOMMENDED DECISION

THIS MATTER came on for hearing before the undersigned Administrative Law Judge upon respondent's motions for summary disposition of the above-captioned contested cases, consolidated for hearing by Order dated November 12, 1991.

### APPEARANCES

Dover W. Walker, petitioner, appeared pro se.

Sueanna P. Sumpter, Assistant Attorney General, appeared for respondent, North Carolina Department of Environment, Health, and Natural Resources.

### ISSUES

Do these contested cases present any genuine issue as to any material fact and should the respondent be entitled to entry of judgment in its favor as a matter of law?

### FINDINGS OF FACT

1. On September 7, 1990, petitioner filed with the Office of Administrative Hearings a petition for contested case hearing. Petitioner indicated that his appeal was based upon "suspension" and "sexual harassment." The contested case was assigned file number 90 OSP 0873. Respondent filed a motion for summary disposition of this contested case on February 26, 1991. Petitioner filed a written response to that motion.

2. Petitioner filed a second petition for contested case hearing on February 22, 1991. The contested case was assigned file number 91 OSP 0180. Petitioner indicated that his appeal was based upon his dismissal and upon alleged sexual discrimination and "retaliation." On May 30, 1991, respondent served the petitioner with a discovery request which included a request for admissions. Respondent filed a motion for summary disposition in this contested case on February 28, 1992. In its motion, respondent contended that, by virtue of his having failed to respond to request for admission number one (1), petitioner had admitted the relevant facts and that it was entitled to entry of judgment in its favor as a

matter of law. On March 20, 1992, respondent served upon petitioner an Affidavit of Philip K. McKnelly and a Memorandum of Law offered in support of its motion. To date, petitioner has made no response, either written or oral, to respondent's motion for summary disposition of contested case number 91 OSP 0180.

3. On March 26, 1992, the undersigned Administrative Law Judge issued a "Notice of Conference Call on Motion for Summary Judgment," indicating that he would hear the arguments of the parties by means of a telephone conference at 10:00 A.M., April 3, 1992, the telephone call to be placed by the Office of Administrative Hearings. The Notice required the parties to inform the Administrative Law Judge in the event they were unable to adhere to this schedule.

4. On April 3, 1992, at 10:00 A.M., the Office of Administrative Hearings attempted to place the conference call, but there was no answer at petitioner's residence.

5. After considering the verified petitions filed by the petitioner, his response to the motion for summary disposition filed in contested case number 90 OSP 0873, and his admissions made in contested case number 91 OSP 0180; and the affidavits, papers, and memorandum of law submitted by the respondent in support of its motions for summary disposition, the Administrative Law Judge finds the following facts with regard to the contested cases before him.

90 OSP 0873

6. Petitioner was employed by the respondent, North Carolina Department of Environment, Health, and Natural Resources, Division of Parks and Recreation as a General Utility Worker at Crowders Mountain State Park between March 6, 1989 and November 14, 1990. The pay grade associated with this position was 53.

7. Mrs. Christina Lewandowski has been continuously employed by the respondent as a General Utility Worker at Crowders Mountain State Park since March 1, 1990. The pay grade associated with her position is 53.

8. The duties and responsibilities assigned to Mrs. Lewandowski's position do not include, and have never included supervision of any other employee. Both her position and that formerly held by the petitioner are supervised by the Park Superintendent, Mr. Joe Sox, and, on an acting basis, by Chief Ranger Grant Gibson.

9. On June 1, 1990, the petitioner was cleaning a lawnmower with a "long-reach" screwdriver in front of the Park Maintenance Shop. He and Mrs. Lewandowski became involved in a verbal dispute regarding the removal of tools from her truck. Petitioner stopped cleaning the lawnmower, stood up, advanced toward his co-worker, and told her that she was a "fat fucking pig." He subsequently stated that he "owed the swine family an apology" for comparing her to a pig, and called her "a bitch" and "a liar."

10. When his acting supervisor, Mr. Gibson, attempted to investigate this incident, the petitioner stated that his co-worker "had gotten what was coming to her," and had "jumped him" at the Maintenance Shop regarding the removal of the tools from her truck. Petitioner further stated that he regretted having used the word "pig" because he had thereby insulted the "swine family," called his co-worker a "fat, malicious, spiteful and domineering woman," and a "fat human bitch." Petitioner then stated that he did not want to comment further.

11. When asked what was bothering him, petitioner told Mr. Gibson that he was bothering him, and that he did not want to discuss the incident with him. When the acting supervisor asked what he had meant when he said his co-worker "jumped him," the petitioner responded "Grant, . . . did you have to work to become so stupid or were you born dumb?" Petitioner told Mr. Gibson that he did not wish to discuss the incident with him, and wanted him to leave so that he could finish spreading gravel. When asked if his co-worker had hit him, or yelled at him, the petitioner told his acting supervisor that the latter was "a disgrace to the Park system," "not worth a shit as a worker," and "lazy" to the point that he was "actually stealing from the park" by accepting a paycheck. Petitioner then expressed doubts that Mr.

Gibson was actually working the hours shown on his time sheet, and implied that, when previously employed in a seasonal position, Mr. Gibson has been derelict in his duties.

12. By memorandum dated June 8, 1990 and received by petitioner on June 28, 1990, respondent documented the following disciplinary actions taken against the petitioner: issuance of a final written warning and a one-day suspension without pay. The one-day suspension was effective on June 5, 1990. The disciplinary action was taken for reasons of unacceptable personal conduct exhibited by the petitioner on June 1, 1990; specifically, the use of abusive language toward his co-worker, Mrs. Lewandowski, and toward his acting supervisor, Mr. Grant.

13. On July 6, 1990, respondent's representatives conducted an investigation into petitioner's allegations, made subsequent to the events of June 1, 1990, that he had been the victim of "sexual harassment" on the part of his co-worker, Mrs. Lewandowski. Respondent concluded that there was not sufficient evidence to sustain these charges.

91 OSP 0180

14. On November 14, 1990, petitioner entered the park office. He was preparing to leave for Raleigh, where he was to meet with Dr. Philip McNelly, Director, Division of Parks and Recreation. Mr. Joe Sox, petitioner's supervisor, told him that a state car has been filled with gas and was ready to go. Mr. Sox gave the petitioner gas credit cards.

15. The supervisor then approached petitioner and told him that he had a written warning to give him. The supervisor told petitioner that he could sign the memorandum or not as he chose. Petitioner looked at the memorandum for about a minute, then said "you can have it now, you son-of-a-bitch," tore up the memorandum and threw it at his supervisor. Petitioner then left the office.

16. Petitioner's supervisor conferred with Dr. McNelly, who indicated that petitioner was not to take the state car, but should instead drive his personal vehicle. At Mr. Sox's request, Mr. Gibson spoke with the petitioner and told him that he was not to drive the state car, and that he would be paid mileage for use of his personal vehicle. Petitioner then proceeded to drive the state car to Raleigh.

17. Petitioner was terminated from employment that same day. This decision was made by Dr. McNelly and was documented in a memorandum dated November 14, 1990. The memorandum cites the unacceptable personal conduct set forth in findings of fact numbers fifteen (15) and sixteen (16) above as being the reasons for petitioner's termination.

18. The memorandum set forth a summary of previous disciplinary actions taken against the petitioner, specifically: an oral warning given 11/5/90 for job performance; a written warning dated 11/14/90 for job performance; and a final written warning given June 28, 1990 for unacceptable personal conduct.

19. The reasons set forth in the memorandum of November 14, 1990, were the true and sole reasons for petitioner's termination from employment with the respondent.

CONCLUSIONS OF LAW

1. At the time of his suspension and subsequent termination, petitioner was a permanent state employee as that term is defined by G.S. §126-39.

2. All parties are properly before the Office of Administrative Hearings and the State Personnel Commission.

3. All parties have been correctly designated and there is no question of misjoinder or nonjoinder of the parties.

## CONTESTED CASE DECISIONS

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4. G.S. §126-35(a) provides, in relevant part: "[n]o permanent employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause."

5. G.S. §126-36 provides, in relevant part: "[a]ny State employee or former State employee who has reason to believe that . . . demotion, layoff or termination of employment was forced upon him in retaliation for opposition to alleged discrimination or because of his . . . sex . . . shall have the right to appeal directly to the State Personnel Commission."

6. 25 N.C. Admin. Code 1J .0604(b) provides the following distinction between job performance and personal conduct issues:

"The Job Performance category is intended to be used in addressing performance-related inadequacies for which a reasonable person would expect to be notified of and allowed an opportunity to improve. Personal Conduct discipline is intended to be imposed for those actions for which no reasonable person could, or should, expect to receive prior warnings."

The State Personnel Manual cites examples of unacceptable personal conduct actions, which category includes, but is not limited to, insubordination and knowing misuse of state property.

7. 25 N.C. Admin. Code 1J .0610(5) provides, in relevant part:

An employee may be suspended without pay for disciplinary purposes for causes relating to any form of personal conduct or in conjunction with a final written warning for performance of duties.

8. 25 N.C. Admin. Code 1J .0608 provides, in relevant part:

(a) Employees may be dismissed, demoted, suspended or warned on the basis of unacceptable personal conduct. Discipline may be imposed, as a result of unacceptable personal conduct, up to and including dismissal without any prior warning to the employee.

9. In ruling upon respondent's motions for summary disposition of these contested cases, the Administrative Law Judge and the State Personnel Commission must consider the record in the light most favorable to the petitioner, and must determine whether these matters present any genuine issue as to any material fact and whether the respondent is entitled to entry of judgment in its favor. Snipes v. Jackson, 69 N.C. App. 64, 316 S.E.2d 657, appeal dismissed and cert. denied, 312 N.C. 85, 321 S.E.2d 899 (1984).

### 90 OSP 0873

10. In contested case number 90 OSP 0873, petitioner has appealed his suspension for one day without pay, alleging that such was without just cause, and has also contended that the actions of his co-worker, Mrs. Lewandowski, amounted to "sexual harassment." Respondent has moved for summary disposition of this contested case.

11. Petitioner has acknowledged that he was abusive toward his co-worker, Mrs. Lewandowski, and his acting supervisor, Mr. Gibson, on June 1, 1990. See: petitioner's response to motion for summary disposition and attachments.

12. The behavior so admitted by the petitioner constitutes unacceptable personal conduct and just cause for his suspension for one day without pay.

13. Petitioner's contentions regarding the behavior of Mrs. Lewandowski are insufficient as a matter of law to negate a finding of just cause for his suspension.

14. Petitioner's allegations regarding the behavior of Mrs. Lewandowski are insufficient as a matter of law to state any claim against the respondent under Chapter 126. Petitioner has not alleged that the respondent engaged in the practice of sexual harassment. Instead, his allegations are directed against a co-worker who did not occupy a supervisory position. By the petitioner's own account, he did not bring his allegations regarding Mrs. Lewandowski's behavior to the attention of his supervisor until June 6, 1990

( See: response to motion for summary disposition and attachments) and he has made no allegations that the alleged behaviors of his co-worker continued after that date. Upon learning of petitioner's allegations, the respondent conducted an investigation into the matter, but determined that there was not sufficient evidence to support petitioner's contentions. That determination is not a matter which may be made the subject of an appeal under Chapter 126.

15. Further, even if the petitioner had stated some claim against the respondent for sexual harassment or discrimination, suspension is not a disciplinary action from which an appeal might have been taken under §126-36.

16. Contested case number 90 OSP 0873 does not present any genuine issue as to any material fact, and the respondent is entitled to entry of judgment in its favor as a matter of law.

91 OSP 0180

17. In contested case number 91 OSP 0180, petitioner has appealed his termination from employment, alleging that such was done without just cause because he intended to report his supervisor's alleged theft of gasoline from the Park's gas storage tank, and because of his "refusal to retract the sexual harassment grievance, as . . . [his supervisor] requested, which . . . [he] filed against Christina Lewandowski on 061890." Petitioner has further expressed his belief that he was "discriminated against in retaliation for having opposed practices made unlawful by Title VII of the Civil Rights Act of 1964, as amended."

18. By virtue of his having failed to deny or otherwise respond to respondent's discovery request, petitioner has admitted those statements and actions attributed to him in the memorandum of disciplinary action dated November 14, 1990. See: respondent's first discovery request and request for admission number one (1) contained therein. Petitioner's behavior toward his immediate supervisor on that date may be described as insubordinate, violent, and abusive. Petitioner further disobeyed the orders of the Division Director by taking the state car to Raleigh after being told that he was not to do so. This conduct represents insubordination and knowing misuse, or unauthorized use of state property.

19. The behaviors so admitted by the petitioner represent unacceptable personal conduct and constitute just cause for his termination.

20. Petitioner's contentions regarding his supervisor's alleged theft of gasoline do not present any genuine issue as to any material fact. The facts as admitted by the petitioner establish that there was just cause for his termination. Further, such allegations are insufficient to state a cause of action under G.S. §126-36, as the retaliation alleged is not "for opposition to alleged discrimination or because of his age, sex, race, color, national origin, religion, creed, political affiliation, or handicapped [handicapping] condition as defined by G.S. 168A-3."

21. Petitioner has alleged that he was discharged in retaliation for his opposition to sexual harassment. Were this case to proceed to hearing, petitioner would bear the initial burden of establishing a prima facie case of discrimination. The burden would then shift to the respondent to articulate some legitimate nondiscriminatory reason for the employment decision. If such a reason were articulated, the petitioner would have the opportunity to show that the stated reason for the employment decision was, in fact, a pretext for discrimination. North Carolina Dep't of Cor. v. Gibson, 308 N.C. 131, 301 S.E.2d 78 (1983), Area Mental Health v. Speed, 69 N.C. App. 247, 317 S.E.2d 22, cert. denied, 312 N.C. 81, 321 S.E.2d 893 (1984).

22. In the present case, petitioner has failed to allege even a prima facie case of retaliatory discharge. His petition contains no allegations of inappropriate motivation on the part of Philip K. McKnelly, the Division Director and the individual who made the decision to terminate petitioner's employment. Even if the petitioner were able to establish a prima facie case of retaliatory discharge, the facts which he has admitted would establish that the respondent has a legitimate, nondiscriminatory reason for terminating his employment. Further the nature of petitioner's actions and statements on November 14, 1990 were such that he would be unable, as a matter of law, to show that the reasons given for the employment decision were merely pretextual.

## CONTESTED CASE DECISIONS

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23. This matter presents no genuine issue as to any material fact and the respondent is entitled to judgment in its favor as a matter of law.

### RECOMMENDED DECISION

Based upon the foregoing findings of fact and conclusions of law, it is hereby recommended that the State Personnel Commission enter summary judgment in these contested cases in favor of the respondent; and thereby uphold the contested disciplinary actions, being petitioner's suspension for one day without pay and his subsequent termination from employment with the respondent.

### ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, NC 27611-7447, in accordance with G.S. §150B-36(b).

### NOTICE

The agency making the final decision in these contested cases is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. §150B-36(a).

The agency is required by G.S. §150B-36(b), to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The Agency that will make the final decision in these contested cases is the State Personnel Commission.

This the 5th day of May, 1992.

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Sammie Chess, Jr.  
Administrative Law Judge

## CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
91 ABC 0753

N. C. ALCOHOLIC BEVERAGE  
CONTROL COMMISSION,  
Petitioner

v.

SPRING GARDEN BAR & GRILL  
INC., T/A SPRING GARDEN BAR &  
GRILL,  
Respondent.

RECOMMENDED DECISION

The above entitled matter was heard before Fred G. Morrison, Jr., Senior Administrative Law Judge, Office of Administrative Hearings, on March 26, 1992, in High Point, North Carolina.

This hearing was initiated at the request of the Petitioner to determine whether the Respondent has violated the Alcohol Beverage Control Laws. In addition to filing a petition pursuant to G.S. 150B-23, the Petitioner served upon the Respondent a Notice of Alleged Violation stating that a complaint had been filed with the Petitioner alleging that the Respondent or its agent had violated the Alcohol Beverage Control laws by an employee selling malt beverages to Jeffrey Glen Harris and Sharon Denise Alexander, persons less than 21 years of age, on the licensed premises on or about December 19, 1990, at 6:10 p.m., in violation of G.S. 18B-302(a)(1).

Present at the hearing for the Petitioner was Larry S. Height, Chief Agency Legal Specialist for the North Carolina Alcohol Beverage Control Commission.

The Respondent was represented at the hearing by its president, William F. Sherrill. Following the hearing, the Respondent retained the services of Greensboro attorney, Deborah J. Bost to file a proposed decision and represent it in all further proceedings in this matter.

### FINDINGS OF FACT

From official documents in this file, sworn testimony of the witnesses and other competent and admissible evidence, it is found as a fact that:

1. Respondent, Spring Garden Bar & Grill, Inc., t/a Spring Garden Bar & Grill, Greensboro, North Carolina, held valid ABC permits on December 19, 1990, for off-premises malt beverages, fortified and unfortified wine, and mixed beverages. Respondent has held its ABC permits for approximately 10 years with no ABC warnings or violations.
2. Both before and after December 19, 1990, Respondent has taken numerous preventative measures to ensure compliance with all ABC laws. These preventative measures include holding frequent ALE meetings at each establishment for its employees, having an ALE agent come to each establishment once a year to speak with employees and purchasing books annually for each establishment regarding the use of fake identification.
3. Both before and after December 19, 1990, Respondent has at all times cooperated with ALE in the enforcement of the ABC laws. Respondent has confiscated numerous falsified identifications and forward them to ALE. Respondent has informed ALE of persons making fake IDs. Respondent has received many letters from ALE with regard to Respondent's consistent compliance with the ABC laws.

## *CONTESTED CASE DECISIONS*

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4. On December 19, 1990, at approximately 9:00 a.m., Respondent held an ALE meeting which employee, Stephanie May, attended. This meeting focused on the wide-spread use of falsified or altered identifications by underage persons. Samples of false IDs were passed around among the employees for examination. At that meeting the ALE officer mentioned how impressed he was with the operation's capability of collecting so many false IDs.
5. On December 19, 1990, at approximately 6:00 p.m., Jeffrey Glen Harris and Sharon Denise Alexander were working for and under the direct supervision of Greensboro Police Detective, Jay E. Hoover. Harris and Alexander entered Spring Garden Bar & Grill located on Spring Garden Street, Greensboro, North Carolina. Alexander went to the restroom and Harris went to the bar and ordered two Michelob Lites from Respondent's employee, Stephanie May. Stephanie May refused to serve Harris the beers until both Harris and Alexander produced identification. When Alexander returned from the restroom, Harris and Alexander showed Stephanie May their driver's licenses showing their dates of birth as May 4, 1971, and July 23, 1972, respectively. Stephanie May examined the driver's licenses, verified their authenticity and then served Harris and Alexander two (2) Michelob Lites.
6. On December 19, 1990, Stephanie May was charged with the criminal violation of selling malt beverages to persons less than 21 years old under G.S. 18B-302(a).
7. On December 19, 1990, at approximately 6:10 p.m. Respondent's employee, Stephanie May, was in a rush when she checked Harris' and Alexander's identifications because employees were changing shifts, and the restaurant was very busy with the dinner crowd. The employees had been advised by an ALE officer in a meeting held in late 1990 that they should observe the actions of possible underage people and watch for statements like "I left my ID at home" in addition to checking the IDs to determine whether they were false or to determine if the picture did not look like the person making the purchase.
8. Stephanie May believed both Harris and Alexander looked over the age of 21 on December 19, 1990. She carded them because it was Spring Garden's policy to card all persons who looked under the age of 30.
9. Stephanie May's employment at Spring Garden Bar & Grill was immediately terminated as a result of the December 19, 1990 incident.
10. All criminal charges against Respondent's employee, Stephanie May, were dismissed on January 10, 1991.
11. Respondent rehired Stephanie May after receiving written and oral approval of such re-hire from Rick Amick at ALE.
12. Detective Hoover stated that the reason the case was dismissed against Ms. May was because her attorney, Mr. Hatfield, assured the District Attorney and Detective Hoover that she would not work there again and because the case was weak, which Respondent disputes.
13. G.S. 18B-302(d)(2) allows as a defense "... facts that reasonably indicated at the time of sale that the purchaser was at least the required age."
14. Since December 19, 1990, Respondent has used Stephanie May and her experience of the December 19, 1990 incident as an example for Respondent's other employees. Stephanie May travels to all of Respondent's establishments to lecture on the importance of complying with the ABC laws. She specifically warns other employees to always verify the dates on the identification shown and to always ask the customer's age.

### CONCLUSIONS OF LAW

## CONTESTED CASE DECISIONS

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1. The North Carolina Alcoholic Beverage Control Commission has the authority to revoke or suspend the permits of a permittee for violations of Chapter 18B of the General Statutes, or any rule of the Commission.
2. The Respondent's employee sold malt beverages to Jeffrey Glen Harris and Sharon Denise Alexander, persons less than 21 years of age, on the licensed premises, on December 19, 1990, at 6:10 p.m., in violation of G.S. 18B-302(a)(1).

### RECOMMENDED DECISION

It is recommended that Respondent pay a \$500 penalty.

### ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

### NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Alcoholic Beverage Control Commission.

This the 8th day of May, 1992.

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Fred G. Morrison, Jr.  
Senior Administrative Law Judge

## CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
91 EHR 0757

NALLEY COMMERCIAL PROPERTIES,  
Petitioner

v.

N.C. DEPARTMENT OF ENVIRONMENT,  
HEALTH, AND NATURAL RESOURCES,  
Respondent.

### RECOMMENDED DECISION

This matter was heard before Brenda B. Becton, Administrative Law Judge, on January 29, 1992, in Fayetteville, North Carolina. At the conclusion of the hearing, the parties elected to exercise their right to file written submissions as provided for in North Carolina General Statutes section 150B-34(b). The record was closed on March 25, 1992.

### APPEARANCES

For Petitioner: ROSE, RAY, WINFREY, & O'CONNOR, Attorneys at Law, Fayetteville, North Carolina; Steven J. O'Connor appearing.

For Respondent: Billy R. Godwin, Associate Attorney General, Department of Justice, Raleigh, North Carolina.

### ISSUES

1. Whether the Petitioner violated the provisions of the Sedimentation Pollution Control Act of 1973 as alleged in the Director's civil penalty assessment dated June 4, 1991.
2. Whether the Petitioner is the financially responsible party for the land disturbance.

### FINDINGS OF FACT

From official documents in the file, sworn testimony of the witnesses, and other competent and admissible evidence, it is found as a fact that:

1. Nalley Commercial Properties (hereinafter "Petitioner") is the owner of a tract of land located off U.S. Highway 401 Business, west of Fayetteville, North Carolina.
2. The property, approximately nine acres in size, is the site of a Food Lion and shopping center. The land-disturbing activity on this site was associated with the construction and development of the Food Lion and adjacent bays in the shopping center.
3. Buckhead Creek, flowing generally in a north-south direction, lies adjacent to and west of the site.
4. The Petitioner is a Partnership lawfully doing business in Cumberland County, North Carolina and George G. Nalley, Jr. is the Petitioner's Managing General Partner.
5. The Respondent, an agency of the State of North Carolina, is charged with implementing and enforcing the provisions of the Sedimentation Pollution Control Act of 1973 (SPCA), N.C. Gen. Stat. §113A-50 et seq. Under section 113A-64, the Respondent may assess a civil penalty of up to \$500.00 per day to any person who violates any provision of the SPCA.

6. The SPCA requires, *inter alia*, that an erosion control plan be filed with and approved by the Respondent prior to the initiation of any land-disturbing activity on a site where greater than one acre is to be uncovered.
7. An Erosion and Sedimentation Control Plan (hereinafter "Plan") for the construction of the Food Lion was filed on September 22, 1988 in the Respondent's Fayetteville Regional Office as required by the SPCA and was approved on October 11, 1988. A revised Plan was approved by the Regional Office on February 21, 1989.
8. Section 113A-61.1 of the SPCA requires that persons engaged in land-disturbing activities comply with the provisions of an approved Plan.
9. Pursuant to the provisions of the SPCA at section 113A-57(3) and 15A NCAC 4B .0007, a permanent ground cover, sufficient to restrain erosion from leaving the site, must be provided within 30 working or 120 calendar days, whichever is shorter, of completion of construction and development.
10. The implementing regulations promulgated by the Sedimentation Control Commission at 15A NCAC 4B .0013 require that the persons conducting land-disturbing activities must maintain all temporary and permanent erosion control measures during the development of a site and that after site development, the landowner or person in possession or control of the land must maintain said erosion control measures.
11. Quality Construction Company was the agent of Nalley Commercial Property in the preparation of the Erosion and Sedimentation Control Plan for the subject property. The Plan was submitted by Quality Construction Company with the knowledge and approval of Nalley Commercial Properties.
12. The Plan for the construction of the Food Lion provided seeding specifications and that all disturbed areas outside of the building paving areas were to be grassed. The Plan did not expressly provide that permanent ground cover was to be established as part of the Plan.
13. The Plan approved by the Respondent for the Petitioner's site contained certain grass seeding specifications deemed adequate by the Respondent, if properly followed, to establish the amount of permanent ground cover necessary to restrain erosion upon completion of construction and development of the site.
14. On September 26, 1988, W. Frank Eskridge, Sr. signed a Financial Responsibility Ownership Form stating, under oath, that Quality Construction Company was financially responsible for the land disturbing activities on the Petitioner's property.
15. During all inspections by the Respondent of the site, the Respondent's agents generated a "Sedimentation Inspection Report" which indicated findings regarding the compliance status of the site at the time of the inspection.
16. On March 13, 1990, April 24, 1990, and May 21, 1990, Steve Cook, a duly authorized agent of the Respondent's Land Quality Section, Division of Land Resources, inspected the site to determine compliance with the SPCA. The Petitioner received a copy of these inspection reports.
17. The Petitioner was cited for violation of G.S. §113A-61.1 (failure to follow the Plan) and G.S. §113A-57(3) (inadequate ground cover). The May inspection included a citation for violation of 15A NCAC 4B .0013 (failure to maintain a sediment basin located in one corner of the property and offsite sedimentation resulting from inadequate basin maintenance).
18. The Respondent sent the Petitioner, by certified mail, a Notice of Violation (NOV) of the SPCA dated May 24, 1990. The Petitioner received the Notice on May 29, 1990.

19. On May 29, 1990, G. Weston (Wes) Nalley of Nalley Commercial Properties telephoned the Respondent's Fayetteville Regional Office and spoke with Joe Glass, the Regional Engineer, about arranging an on-site meeting to discuss the Notice of Violation. Additionally, Nalley spoke with Steve Cook about the use of various forms of ground cover recommended by the Respondent to establish a ground cover on the site.
20. Steve Cook reinspected the site on June 20, 1990. He determined that the same violations still existed.
21. The Respondent sent the Petitioner, by certified mail, a Notice of Continuing Violation of the SPCA dated June 22, 1990. The Petitioner received the Notice on June 25, 1990.
22. Steve Cook conducted inspections of the site on the following dates: July 2, 1990; July 6, 1990; July 13, 1990; July 27, 1990; August 8, 1990; September 11, 1990; September 27, 1990; October 10, 1990; October 22, 1990; November 5, 1990; November 21, 1990; December 3, 1990; December 26, 1990; January 7, 1991; January 22, 1991; February 5, 1991; February 19, 1991; March 5, 1991; March 19, 1991; and April 3, 1991.
23. The Petitioner was provided copies of Steve Cook's inspection reports.
24. From May 29, 1990 through April 3, 1991, violations of G.S. §113A-57(3) were found by the Respondent's inspector, Steve Cook. The inspections during such period indicated that the Petitioner failed to plant or otherwise provide a permanent ground cover sufficient to restrain erosion on some portions of the subject property.
25. The Respondent's inspections between May 29, 1990 and January 7, 1991 showed that the Petitioner violated 15A NCAC 4B .0013 by failing to clean out a sediment basin during that period of time.
26. On June 4, 1991, Charles H. Gardner, Director of the Respondent's Division of Land Resources, assessed a \$12,400.00 civil penalty against the Petitioner for alleged violations of the SPCA occurring during the 310 day period from May 29, 1990 through and including April 3, 1991. The penalty was assessed at \$40.00 per day.
27. In determining the amount of the penalties assessed against the Petitioner, the Respondent "considered the criteria in 15A NCAC 4C .0006 and G.S. 113A-64(a)(3), and more particularly, the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with the Sedimentation Pollution Control Act and the Rules thereunder." (Respondent's exhibit 42, p.6)
28. The Respondent utilized a worksheet in calculating the penalty. The worksheet lists eight criteria, four of which were applicable to the Petitioner. The Petitioner was assessed a civil penalty in the amount of \$10 for the types of violations, \$5 for the degree and extent of harm caused by the violation, \$10 for adherence to plan/effectiveness of plan (effectiveness of steps taken to correct violations), and \$15 for prior record of violator for a total penalty of \$40 per day.  
  
The \$10 figure for item A on the worksheet represents an assessment for each of the three violations that the Respondent alleges occurred. In calculating the amount of the penalty to be assessed, the Respondent normally assesses \$5 per day for each violation. In this case, however, the Respondent did not assess the full \$5 for either the failure to follow the approved plan violation (because it overlaps with the failure to provide adequate ground cover violation) or the failure to maintain erosion control measures (because this violation was not continuous throughout the entire period of noncompliance).
29. The Petitioner received the civil penalty on June 17, 1991 and filed a Petition for a Contested Case Hearing with the Office of Administrative Hearings on August 13, 1991.

30. On several occasions the Petitioner made erosion control related expenditures on the site: \$7,000 on October 10, 1990; \$530 on June 26, 1991; \$1413.15 on July 10, 1991; \$651.42 on July 22, 1991; \$732 on August 8, 1991; and \$4,578.36 on August 26, 1991.
31. There was no testimony offered to indicate when construction and development of the site was completed. The evidence indicates that the construction was either nearly completed or completed by August 22, 1990.
32. The Petitioner has been the subject of a previous enforcement action on the same site on November 28, 1989.

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Petitioner, Nalley Commercial Properties, as landowner and developer of the 9 acre Food Lion Shopping Center which is the subject of this action, may be held responsible for any violations which have been committed on the subject property and civil penalties may be assessed against it pursuant to North Carolina General Statutes section 113A-64 and 15A NCAC 4A .0005(8).
2. In accordance with North Carolina General Statutes section 113A-64 and 15A NCAC 4C .0007, the Petitioner received on May 29, 1990 a proper Notice of Violations of the Sedimentation Pollution Control Act of 1973.
3. The Petitioner was required by North Carolina General Statutes section 113A-61.1 to implement their approved erosion control plan both during and upon completion of construction and development of the site. The Plan included seeding specifications that were adequate, if properly implemented, to establish and maintain a ground cover of grass sufficient to restrain erosion on the site.
4. The Petitioner was required by North Carolina General Statutes section 113A-57(3) and 15A NCAC 4B .0007 to establish, within 30 working or 120 calendar days, whichever is shorter, of completion of construction and development, a permanent ground cover sufficient to restrain erosion from leaving the site.
5. The Petitioner was required by 15A NCAC 4B .0013 to maintain all temporary and permanent erosion control measures during and after the development of the site.
6. The Respondent failed to meet its burden of proving that the Petitioner violated North Carolina General Statutes section 113A-61.1 by failing to conduct a land disturbing activity in accordance with a filed approved erosion control plan. The evidence tended to show that beginning around late June, 1990 or early July, 1990, the Petitioner began seeding portions of the disturbed land on the site in an attempt to establish ground cover. The seeding was done in a piecemeal fashion and either subsequent weather and site problems caused additional work to be needed or the original measures were ineffective. The fact that permanent ground cover did not result from the Petitioner's seeding efforts does not mean that the Petitioner did not seed the site in accordance with the specifications contained in the Plan that was submitted to and approved by the Respondent.
7. The Petitioner violated North Carolina General Statutes section 113A-57(3) by failing to plant or otherwise provide a permanent ground cover sufficient to restrain erosion after the completion of construction on the subject property between August 22, 1990 and April 3, 1991.
8. The Petitioner violated 15A NCAC 4B .0013 by failing to maintain all temporary and permanent erosion control measures during site development on the subject property between May 29, 1990 and April 3, 1991, including maintaining the sediment basin for the period between May 29, 1990 and January 7, 1991.

9. Since the Respondent did not meet its burden of proof regarding one of the three violations for which the civil penalties were assessed and the evidence does not establish that construction was completed prior to August 22, 1990, the penalties should be recalculated.

The Respondent utilized a Civil Penalty Assessment for SPCA Violations worksheet (Respondent's exhibit 43) which incorporates the criteria in North Carolina General Statutes section 113A-64(a)(3) and 15A NCAC 4C .0006. The Respondent assessed the Petitioner varying dollar amounts for four of the eight criteria listed on the worksheet. There was no evidence presented to indicate that the amounts assessed for items B, C, and D should be altered as a result of the Respondent's failure to prove all of the violations listed in item A on the worksheet.

It appears that the only violation in item A that was assessed at the \$5 rate was the violation for failure to provide adequate groundcover. Dividing the remaining \$5 between the two remaining violations makes each violation assessable at \$2.50 per day each.

In recalculating the penalty by utilizing the method used by the Respondent in its civil penalty assessment worksheet, the \$10 figure in item A should be reduced by \$2.50 because respondent failed to prove that the Petitioner did not follow the approved plan. This reduces the total penalty to \$37.50 per day.

As to the failure to provide adequate permanent groundcover, this violation was only proven to have lasted for 226 days, August 22, 1990 through April 3, 1991. This further reduces the \$10 figure in item A by \$5 for a period of 84 days.

Assessing the Petitioner \$37.50 per day for 226 days and \$32.50 per day for 84 days reduces the total penalty from \$12,400 to \$11,205.

#### RECOMMENDED DECISION

The North Carolina Department of Environment, Health, and Natural Resources will make the Final Decision in this contested case. It is recommended that the agency adopt the Findings of Fact and Conclusions of Law set forth above and assess a civil penalty against the Petitioner in the amount of \$32.50 per day for the period beginning May 29, 1990 and ending August 21, 1990 and in the amount of \$37.50 per day for the period beginning on August 22, 1990, the date development was proven to have ceased, and ending on April 3, 1991, a total penalty in the amount of \$11,205.

#### NOTICE

Before the agency makes the FINAL DECISION, it is required by North Carolina General Statutes section 150B-36(a) to give each party an opportunity to file exceptions to this RECOMMENDED DECISION, and to present written arguments to those in the agency who will make the final decision.

The agency is required by North Carolina General Statutes section 150B-36(b) to serve a copy of the Final Decision on all parties and to furnish a copy to the Parties' attorney of record and to the Office of Administrative Hearings.

This the 8th day of May, 1992.

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Brenda B. Becton  
Administrative Law Judge

*The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.*

**TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE**

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3	Auditor	Barber Examiners	6
4	Economic and Community Development	Certified Public Accountant Examiners	8
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- C - Correction
- FR - Final Rule
- GS - General Statute
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